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In Two Volumes.

With a Compleat Table to the Whole.

VOL. I.

In the SAVOY:

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THE PREFACE.

THE Uſefulneſs of the following Treatiſe will ſufficiently appear, on a due Obſervation of the Contents: Thus much, we think, may be truly ſaid for it without Oſtentation or Offence, That there's no Book yet Extant, which contains ſo *great* a *Variety* of Matters and Things *Uſeful* and *Modern*; omitting thoſe which Time and Change have render'd *obſolete* or *out of Practice*. It ſtands confeſt by the moſt Learned and Experienced Sages of the Profeſſion in all Ages, that there's no Method more neceſſary in Attaining the *Knowledge* of the *Common Law*, and of the ſeveral Matters *incidental* thereto, than a due Obſervation of the *Manner* of *Pleadings*, which my Lord *Coke* in his Preface to his *Eighth Report*, calls the *greateſt Honour and Ornament of the Common Law of* England. 'Tis much to be *wiſhed*, that the *Forms* of the Proceedings of the Courts of Juſtice were more adhered to by the *Practiſers*, and that the *Pleadings* were in higher Eſteem, than at preſent they ſeem to be. There's not any one, who has applied himſelf to their Study, but muſt greatly admire 'em: None but thoſe, who in reading 'em make uſe of what

is called *Præpoſtera Lectio & præpropera Praxis*, and who juſt skimming over the Surface, go away diſſatisfied or ſurfeited in their Purſuit, that can *ſpeak* of 'em but with *Reverence*; and yet 'tis more to be *lamented*, that there are ſome who would be diſpleaſed, ſhould they not be called *Lawyers*, who treat them with *Diſlike*, if not with *Contempt*. We are very ſorry to find, after all the Care taken in preparing this for the Preſs, there are ſeveral *Errata* in the Impreſſion, which we thought fit to take Notice of. 'Tis hoped they will be excuſed with Candour, eſpecially if upon the Whole the Precedents therein are *uſeful* and *judicionſly* collected. It was impoſſible in ſo ſmall a Compaſs to inſert the ſeveral Forms of *Judgments and Proceedings on Writs of Error*, with that neceſſary *Variety* they require: Therefore, (if this Treatiſe receives the Approbation of the Practiſers) the Publick will ſoon be obliged with the Forms of all Manner of *Judgments in perſonal and mixt Actions*, and of the *Proceedings* on *Writs of Error*; in doing which, as the Judgments of the Court ought to be done with more than ordinary Exactneſs, the greateſt Care that's poſſible is faithfully promiſed by the Author in the Performance.

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B. R.

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Abatement.

To the Jurisdiction of the Court.

B. R. or C. B.

(1.) AND the said *B.* in his own Person, comes and pleads, that this Court ought not to take further Cognizance of the Plea (or *Action*) aforesaid, because he saith the Cause of Action aforesaid, if any accrued to the said *A.* it accrued to the said *A.* out of the Jurisdiction of this Court, that is to say, within the City of *London*, in the County of the same City, and not at *Southwark* in the said County of *Surrey*, or elsewhere within the Jurisdiction of this Court; and this the said *B.* is ready to verify: Whereupon he prays Judgment, whether this Court will take any further Cognizance of the Plea aforesaid.

To the Jurisdiction of the Marshall's Court.

2 Mo. Intr. 1.

3 Instr. Cl. fol. 14.

(2.) And the said *B.* by *C. D.* his Attorney, comes and defends the Force and Injury, and pleads, that the County of *Chester* is, and for so long a Time as there is no Remembrance of any Man to the contrary (or *Time immemorial*) hath been a County Palatine, and that all and all manner of Pleas and Actions, as well real as personal, arising within the said County of *Chester*, during all the Time aforesaid, have been and are pleaded and impleadable within the said County of *Chester*, before the Justices there for the Time being

For that the Cause of Action arose within a County Palatine.

2 Mo. Intr. 1.
Ro. Entr. 1.
3 Instr. Cl. 14.
Bro. Va. Me. 473.

being, and not elſewhere at Common Law out of the ſaid County Palatine; and this he is ready to verify, as the Court ſhall direct: Whereupon, inaſmuch as the Cauſe of Action aforeſaid aroſe within the ſaid County of *Cheſter*, he the ſaid *B.* prays Judgment, whether the Court will therefore take further Cognizance of the Plea (or *Action*), *&c.*

B. B.

That the Lands are pleadable within a Manor Court.
2 Mo. Intr. 2.
Bro. Red. 504.
3 Inſtr. Cl. 8.
Thom. 2.

(3.) And the ſaid *B.* by *C. D.* his Attorney, comes and defends the Force and Injury, and prays Judgment of the Bill aforeſaid; becauſe he ſaith, that the ſaid Place called *C.* is, and Time immemorial hath been a Tenement, Parcel of the Manor of *D.* and that the ſame Tenement, and all other Lands and Tenements within the Manor aforeſaid, are held of our Sovereign Lord *George* the Second, now King of *Great Britain*, and that all the Lands and Tenements of the ſame Manor are, and Time immemorial have been pleaded and impleadable in the Court of that Manor, and not elſewhere: Whereupon he prays Judgment, whether this Court of our ſaid Sovereign Lord the King will take any further Cognizance of the Plea aforeſaid, *&c.*

Replication.

(4.) And the ſaid *A.* replies, that the Bill aforeſaid ought not to be quaſhed, for the Reaſon above alledged by the ſaid *B.* becauſe he ſaith, that the Place aboveſaid called *C.* is, and Time out of Mind hath been Part of (*ſuch a Place*) in the County aforeſaid, pleadable at the Common Law of *England*, and not in the Court of the Manor aforeſaid, as the ſaid *B.* hath above alledged; and this he prays may be enquired of by the Country, *&c.*

B. R. or C. B.

That the Lands were held in Antient Demeſne.

(5.) And the ſaid *B.* by *C. D.* his Attorney, comes and defends the Force and Injury, and pleads, that the Houſe and Cloſe aforeſaid, ſpecified in the ſaid Declaration, are Parcel of the Manor

hor of *D.* in the County of *Suffolk*, and held of the same Manor; which said Manor is of the *Antient Demesnes* of the Crown of our Sovereign Lord *George* the Second, now King of *Great Britain*; and that all Actions for any Trespass done or committed in and upon the said House and Close, ought, and Time out of Mind *(or Time immemorial)* have been used and accustomed to be tried and determined in the Court of the same Manor, and not elsewhere; and this he is ready to verify, as the Court shall think fit: Wherefore he doth apprehend that this Court of our said Sovereign Lord the King will not therefore take further Cognizance of the Plea *(or Action)*, *&c.*

2 Mo. Intr. 2.

Bro. Red. 504. 3 Instr. Cl. 9.

(6.) And the said *B.* by *J. S.* his Attorney, comes and pleads, that this Court of our said Sovereign Lord the King ought not to take Cognizance of the Plea *(or Action)* of Trespass aforesaid, because he saith, that the Place, wherein the said Trespass is supposed to have been done, is, and at the Time of the said Trespass supposed to have been done, was, four Acres of Land with the Appurtenances called *D.* in *N.* aforesaid, in the County aforesaid; which said four Acres of Land with the Appurtenances are; and at the said Time, when, *&c.* and also * *for so long a Time as there is no Remembrance of any Man to the contrary*, have been within the Precincts of the Vill of *D.* in the County aforesaid; which said Vill is, and during the Time aforesaid hath been within the Liberty of the Cinque Ports; within which said Liberty the Writ of our said Sovereign Lord the King doth not lie, *nor* * *for so long a Time as there is any Remembrance of any Man to the contrary* hath it lain: But that all Trespasses, Covenants, and Contracts made or arising within those Liberties, are, and during all the Time aforesaid have been determinable and determined before the Bailiff and Jurats of *D.* aforesaid, by twelve Men summoned, tried, and sworn for that Purpose; and this he is ready to verify, in what Manner the Court shall direct:

That the Lands are within the Liberty of the Cinque Ports.

2 Mo. Intr. 2. 3. Bro. Red. 475. 3 Instr. Cl. 7.

* *Or* Time out of Mind (or *Time Immemorial.)*

* Or as the Words above.

Wherefore it is apprehended that this Court of our ſaid Sovereign Lord the King will not take any further Cognizance of the Plea *(or Action)* aforeſaid, *&c.*

To the Perſon of the Plaintiff.

R. B. or C. B. if the Suit is by Bill.

Alienage pleaded.
2 Mo. Intr. 3.
3 Inſtr. Cl. 15.
Clift 4.
Cl. Aſſ. 14.

(7.) And the ſaid *B.* by *R. L.* his Attorney, comes and prays Judgment of the Bill aforeſaid; becauſe he ſaith, that the ſaid *A.* is an Alien born in the Kingdom of *France*, under the Legiance of *Lewis* the Fourteenth, King of *France*, an Adverſary to our Sovereign Lord the now King of this Kingdom, and ſprung from a Father and Mother (or was born of Parents) Enemies to our ſaid Sovereign Lord the King, and adhering to his ſaid Adverſary, and came into this Kingdom of *England* without the ſafe Conduct of our ſaid Sovereign Lord the King that now is: Wherefore he prays Judgment, whether he ought to make Anſwer to the Bill aforeſaid, *&c.*

Excommunication pleaded.
2 Mo. Intr. 3. 4.
1 Brown 5.
Thom. 9.
Vid. 25. Pl. Gen. 9. Bis in Bro. Red. 160.
3 Inſtr. Cl. 17.
Clift 13.

(8.) And the ſaid *B.* by *C. D.* his Attorney, comes and pleads, that the ſaid *A.* is not entitled to an Anſwer to his Writ aforeſaid, becauſe he ſaith, that the ſaid *A.* before the Iſſuing forth of the Writ aforeſaid, was and now is excommunicate. And he ſhews here to this Court the Letters Patent of the Right Reverend Father in God *Edmund*, by Divine Providence Lord Biſhop of *London*, which are teſtify'd in theſe Words, *ſſ.* To all and Singular, *&c. (and ſo recite the Letters of Excommunication Verbatim)* Whereupon the ſaid *B.* prays that the Plaint aforeſaid be ſtaid without a Day, *&c. Together with this*, that the ſaid *B.* is willing to verify, that the ſaid *A.* mentioned in the Bill aforeſaid, and the now Plaintiff in this Cauſe, and the ſaid *A.* mentioned in the Letters aforeſaid of the ſaid Biſhop, are one and the ſame, and not different Perſons, *&c.*

(9.) And

(9.) And the ſaid *B.* comes and pleads, that the ſaid *A.* ought not to have an Anſwer to the Writ aforeſaid, or to any other Writ brought by the ſaid *A.* for that he ſaith, that the ſaid *A.* now is, and long ſince hath been excommunicated; and brings here into Court Letters of the Right Reverend Father in God *Edmund* Lord Biſhop of *London*; by which the ſaid Excommunication is teſtify'd in theſe Words: *(reciting the Writ)* And becauſe the ſaid *A.* hath not denied it, therefore the ſaid Plaint is to remain without a Day, * *until*, &c.

Excommunication pleaded in Diſability of the Perſon of the Plaintiff. 1. Brown 5. Thom. 9. Vic. 25. Pl. Gen. 9. Bro. Red. 100. 3 Inſtr. 17. Mo. Intr. 3. Clift 13.

* That is, until the Sentence be repealed.

(10.) Afterwards, to wit *(ſuch a Day and Year)* came the ſaid *A.* by his ſaid Attorney, and the ſaid Right Reverend Father in God the ſaid Lord Biſhop of *London* returned his Letters Patent in theſe Words, to wit *(John Lord Biſhop of London*, &c. *reciting the whole Writ of Abſolution)*; therefore let the ſaid *B.* be reſummoned to be in this Court *(ſuch a Day)* to anſwer to the ſaid *A.* in the ſaid Action.

Plaintiff replies Letters of Abſolution.

(11.) And now at this Day, to wit, on the Octaves of *St. Hillary*, as well the ſaid *J.* as the ſaid *D.* appear by their ſaid Attornies, and thereupon the ſaid *J.* pleads, that he ought not to be ſtopped or hindered from proceeding in his Action by Means of the ſaid Excommunication, or from having an Anſwer to his ſaid Writ on that Occaſion; for that he ſaith, that after the ſaid Sentence of Excommunication had againſt him as aforeſaid, he the ſaid *J.* by the Name of, &c. *(ſetting forth the Name he is called by in the Letters of Abſolution)* by the ſaid Sir *G. S.* Knt. Doctor of Laws, Vicar General in Spirituals, and principal Official of the Right Reverend Father in God, by Divine Providence, *Edmund* Lord Biſhop of *London*, was releaſed and abſolved

Letters of Abſolution pleaded in another manner. Pl. Gen. 10. 72, 76.

from the ſaid Sentence of Excommunication, and is now releaſed and abſolved from the ſaid Sentence of Excommunication; and he hath brought into this Court the Letters of the ſaid Right Reverend Father in God, which teſtify the ſame in theſe Words: *Edmund*, &c. *(ſetting forth the Letters of Abſolution)* And the ſaid *J.* further pleads, that after the Day of *(in ſuch a Year)* that is to ſay, on *Sunday* then next following, he came to the Church of St. *B. London*, and was and continued there preſent at the publick Prayers and the Service there had, in the Forenoon of the ſame Day, as he was required; and that he afterwards (that is to ſay) on the ſaid 7th Day of *January* (in ſuch a Year) in the Court Chriſtian of *London* aforeſaid, before the ſaid principal Official, brought and ſhewed a certain Certificate under the Hands of *J. R.* then Miniſter of the ſaid Pariſh of *B.* and alſo under the Hands of *(mentioning the other Perſons who ſigned the Certificate)*; To teſtify that he the ſaid *J.* had performed and fulfilled all Things to be done by him, according to the Form and Effect of the ſaid Letters of Abſolution, whereby the ſaid *J.* is abſolved and diſcharged from the ſaid Sentence of Excommunication; and this he is ready to verify: Wherefore he prays Judgment, and that the ſaid *(Defendant)* may anſwer to his Writ aforeſaid: Whereupon the Attorney for the ſaid Defendant *(or the ſaid Defendant's Attorney* is directed, that he anſwer for the ſaid Defendant, his ſaid Client, in the Action aforeſaid, and the ſaid Attorney ſaith, that he is not inſtructed as in another *Non ſum Informatus*.

The Letters of Abſolution to be ſet forth.

A Performance pleaded of the Matters required by the Letters of Abſolution.

A Concluſion that he is abſolved.

A Prayer of the Judgment of Reſpondeas ouſter.

Judgment by Default.

An Outlawry before Judgment pleaded. 2 Mo. Intr. 4.

(12.) And the ſaid *B.* by *H. C.* his Attorney, comes and defends the Force and Injury, and pleads, that he ought not to be compell'd to anſwer to the Declaration aforeſaid of the ſaid *A.* becauſe he ſaith that one *G. F.* heretofore, that is to ſay, in *Eaſter-Term*, in the Eighth Year of the Reign of his preſent Majeſty, impleaded the ſaid

ſaid *A.* in the Court of Common Pleas in an Action of Debt; and the ſaid *A.* for that he did not come into the ſaid Court (or *did not appear in the ſaid Court)* of Common Pleas to anſwer to the ſaid *G. F.* therein, according to the Law and Cuſtom of this Kingdom of *England*, was put in Exigent to be outlawed in *London*; and on that Occaſion afterwards (that is to ſay) on *Monday* next after the Feaſt of St. *Mark*, in the Eighth Year of the Reign of his ſaid preſent Majeſty, was outlawed in *London* aforeſaid, as by the Record and Proceſs thereof now remaining here in his ſaid Majeſty's Court of Common Pleas, it doth manifeſtly appear; which ſaid Outlawry had and proclaimed againſt the ſaid *A.* in the Manner aforeſaid, now remains in its full Force, Effect, and Virtue, not reverſed or annulled; and this he is ready to verify: Wherefore he prays Judgment, whether he the ſaid *B.* ought to be compelled to anſwer to the aforeſaid Declaration of the ſaid *A.* he being ſo outlawed as aforeſaid, *&c.*

(13.) And the ſaid *A.* replies, that he ought not to be precluded from having an Anſwer to his ſaid Declaration by any Thing above in pleading alledged by the ſaid *B.* becauſe he ſaith, that there is not any ſuch Record of the Proclamation of the Outlawry aforeſaid, againſt the ſaid *A.* now remaining in his ſaid Majeſty's Court of Common Pleas aforeſaid, as the ſaid *B.* hath above in pleading alledged; and this he is ready to verify: Whereupon he prays Judgment; and his * *Debt aforeſaid, and his Damages occaſioned by the detaining of the ſaid Debt:* "If it be pleaded to an Action of Treſpaſs, or any other Action, wherein Damages only are to be recovered, then thus:" *And his Damages occaſioned by the Premiſſes to be awarded to him*, &c.

A Replication, that there is No ſuch Record.

* If it be pleaded to an Action of Debt.

(14.) And the ſaid *B.* rejoins, that there is ſuch a Record of the Outlawry aforeſaid againſt the ſaid *A.* now remaining in his ſaid Majeſty's

A Rejoinder that there is ſuch a Record.

Court of Common Pleas aforeſaid, as he the ſaid *B.* hath above in pleading alledged; and this he is ready to verify by the Record itſelf, and the ſaid *B.* is directed by this Court of our ſaid Sovereign Lord the King, that he have the ſaid Record before our ſaid Sovereign Lord the King at *Weſtminſter (on ſuch a Return)* at his Peril. The ſame Day is given to the ſaid Parties to be there, *&c.*

K. B.

An Outlawry after Judgment pleaded. 2 Mo. Intr. 5.

(15.) —— And pleads, that the ſaid *A.* ought not to be anſwered in his ſaid Action, becauſe he ſaith, That one *H. M.* Gent. in the Court of Common Pleas, before the Juſtices of the ſame Court at *Weſtminſter* aforeſaid, in the County of *Middleſex*, impleaded the ſaid *A.* in a certain Action of Debt; and afterwards, that is to ſay, in *Michaelmas* Term, in the Eighth Year of the Reign of his ſaid preſent Majeſty, in the ſame Court at *Weſtminſter* aforeſaid, recovered againſt the ſaid *A.* his ſaid Debt, and his Damages occaſioned by the detaining of the ſame Debt, whereof the ſaid *A.* was convicted in the ſame Court; and the ſaid *A.* inaſmuch as he came not (or *did not appear*) in the ſame Court of Common Pleas aforeſaid, to ſatisfy the ſaid *H.* for his Debt and Damages aforeſaid, according to the Law and Cuſtom of this Kingdom of *England* was put in Exigent to be outlawed in *London*, and on that Occaſion afterwards (that is to ſay) on *Monday* next after the Feaſt of, *&c.* in the twelfth Year of the Reign of his ſaid preſent Majeſty, he was outlawed in *London* aforeſaid, at the Suit of the ſaid *H.* in the Action aforeſaid, whereof he is convicted, as by the Record thereof now remaining in his ſaid Majeſty's Court of Common Pleas may more fully appear; which Outlawry remains in its full Strength, Force, and Effect, not reverſed or annulled; and this he is ready to verify: Whereupon he prays Judgment, whether the ſaid *A.* ought to be anſwered

in

in his Action aforeſaid; together with this, that he the ſaid *B.* is willing to verify, that the ſaid *A.* above-mentioned, in the Declaration aforeſaid, and the ſaid *A.* outlawed in the Manner aforeſaid, are one and the ſame, and not different Perſons, *&c.*

K. B. or C. B.

(16.) And the ſaid *B.* by *J. S.* his Attorney, comes and defends the Force and Injury, and pleads, that the ſaid *A.* ought not to have an Anſwer to his Writ and Declaration aforeſaid, becauſe he ſaith, That in a Statute publiſhed in the Parliament held in the third Year of the Reign of our Sovereign Lord *James* late King of *England*, *&c.* "It was (amongſt other Things) "enacted by the Authority of the ſame Parliament, that every Popiſh Recuſant, who was, "or thereafter ſhould be convicted of Popiſh "Recuſancy, ſhould ſtand, and be reputed to all "Intents and Purpoſes diſabled as a Perſon *lawfully and duly excommunicated, and as if he "or ſhe had been ſo denounced and excommunicated according to the Laws of this Realm, "until he or ſhe ſo diſabled ſhould conform "him and herſelf, and come to Church and "hear Divine Service, and receive the Sacrament "of the Lord's Supper according to the Laws "of this Realm; and alſo take the Oath appointed "and preſcribed in one other Act made in the "ſame Seſſion of Parliament, Entitled, *An Act "for the better Diſcovering and Suppreſſing of "Popiſh Recuſants*; and that every Perſon and "Perſons ſued, or to be ſued by ſuch Perſon ſo to "be diſabled, ſhould and might plead the ſame "in diſabling of ſuch Plaintiff, as if he or ſhe "were excommunicated by Sentence in the Eccleſiaſtical Court," as in the ſame Statute it is more fully contained; and the ſaid *B.* ſaith, That at the General Gaol-Delivery held at *T.* in the County aforeſaid *(on ſuch a Day and Year)* before *A. B.* Eſq; one of the Juſtices of our ſaid Sovereign

Popiſh Recuſancy pleaded. 2 Mo. Intr. 5, 6, 7.

The Act of 3 K. Ja. 1. Cap. 5. Sect. 11.

* Note; 2 Mo. Intr. is miſtaken; for there the Word is Utlagat', which ſhould be Legitime.

vereign Lord the King, aſſigned to hold Pleas before the King himſelf, the Juſtices of our ſaid Sovereign Lord the King, aſſigned to deliver his Gaol of his ſaid County of *N.* of the Priſoners being therein, it was, by the Oath of twelve honeſt and lawful Men of the County aforeſaid, found that the ſaid *A.* by the Name of *A.* &c. on the twentieth Day of *May (in ſuch a Year)* was of the Age of ſixteen Years and upwards; and from the ſame twentieth Day of *May* in the ſaid Year, did not repair to the Pariſh Church aforeſaid, nor to any Church, Chappel, or uſual Place of Common Prayer; nor was there at the Time of Common Prayer, at any Time within Six Months next enſuing the ſaid twentieth Day of *May* in the Year aforeſaid; but hath forborn the ſame from the ſaid twentieth Day of *May* in the Year aforeſaid, by the ſaid Space of Six Months from thence next enſuing, againſt the Form of the Statute in ſuch Caſe made and provided: * Before which ſaid Aſſizes and General Gaol-Delivery, held at *D.* in the ſaid County of *N.* on the ſaid Day of *(in ſuch a Year)* before *(mentioning the Judges by Name)* Juſtices of our ſaid Sovereign Lord the King, aſſigned to deliver his ſaid Gaol of his ſaid County of *N.* from the Priſoners being therein; he the ſaid *A.* did not render his ſaid Body to the Sheriff of the ſaid County of *N.* nor make his Appearance of Record at the ſame next Aſſizes or General Gaol-Deli-

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* *The Reaſon of this Part of the Plea is, For that there is a Clauſe in the Act of the* 3*d of* Ja. 1. cap. 4. ſect. 7. *which empowered the Juſtices of Aſſize,* &c. *to make Proclamation, that the Body of every ſuch Offender ſhall be rendered to the Sheriff,* &c. *before the next Aſſizes, and if he ſhould not then make his Appearance of Record, it ſhall be deemed as a Conviction by Trial.*

In the Caſe of the Attorney General againſt Griffith *and others, it was ſaid by* Coke, *that he never admitted Popiſh Recuſants to be Witneſſes, and in that Caſe denied to accept 'em as Bail.* 2 Bul. 155.

very,

very, but therein made Default; which ſaid Default was then and there, and now is recorded, as by the Record thereof, returned by the ſaid Juſtices into the Court of our ſaid Sovereign Lord the King, before the King himſelf at *Weſtminſter* aforeſaid, and now there remaining of Record, may more fully appear; and this he is ready to verify: Whereupon he prays Judgment, whether the ſaid *A.* ought to be anſwered to his Writ and Declaration aforeſaid; together with this, that the ſaid *B.* is willing to verify, That the ſaid Judgment of Conviction is in its full Strength, Force, and Effect, not reverſed, revoked, or annulled, *&c.* Averment.

(17.) And the ſaid *B.* in his own Perſon, (or *perſonally*) comes and prays Judgment of the Writ aforeſaid, becauſe he ſaith, that the ſaid *A.* after ſhe had brought her Writ aforeſaid, againſt him the ſaid *B.* that is to ſay *(ſuch a Day and Year)* at *F.* in the ſaid County, took one *M. L.* to be her Husband (or *was married to one* M. L.) who now is her Husband, and alive, that is to ſay at *F.* aforeſaid; and this he is ready to verify: Whereupon he prays Judgment of the Writ aforeſaid, ſued out and proſecuted by the ſaid *A.* as a *Feme Sole*; and that the ſaid Writ may be quaſhed, *&c.* **Coverture** in the **Plaintiff** after the Writ purchaſed. 1 Brown. 7. Bro. Red. 181. 203, 204. 3 Inſtr. Cl. 30. Clift 8. 14.

(18.) At which Day came here the ſaid *W.* by his ſaid Attorney; as alſo the ſaid *R. P.* in his own Perſon; and thereupon the ſaid *R. P.* pleads, that the ſaid *W.* after the ſaid fifteen Days of the Feaſt of *Eaſter*, (from which Day the Plaint aforeſaid was continued here to this Day, that is to ſay, *ſuch a Day and Year)* at *S.* in the ſaid County, took *J. C.* to her Husband, who is now alive, and thus the ſaid *W.* is under Coverture; and this ſhe is ready to verify: Wherefore ſhe prays Judgment of the Writ aforeſaid; and that the ſame may be quaſhed, *&c.* **Coverture** of the Plaintiff after the laſt **Continuance.** In Pl. Gen. fol. 4. 'tis thus pleaded. Pl. Gen. 134. Thom. 1. Vid. 77. 3 Inſtr. Cl. 60. Han. 103.

(19.) And

A Replication, that she is a Feme Sole, with a Traverse of the Coverture.

(19.) And the said *W.* replies, that her said Writ ought not to be quashed by any Thing above alledged, because she saith, that she, on the Day of the issuing forth of the Original Writ aforesaid, was and ever since hath been, and now is single (or *Sole*) **Without that**, that she took to Husband the said *J. C.* after the said fifteen Days from the Feast of *Easter*, as the said *R.* hath above alledged; and this she is ready to verify: Wherefore she prays Judgment, &c. (*observing the same Rule as in the Case before*, No. 13, *whether the Action be in Debt or Case.*)

B. B.

The like pleaded where the Suit was by Bill.

Tho. Entr. 1.

(20.) ——— And prays Judgment of the Bill aforesaid, because he saith, that after the last Continuance of the Bill aforesaid, (to wit) after *Monday* next after the Morrow of the *Ascension of our Lord*, and before *Friday* next after the Morrow of the *Holy Trinity*, from which Day the said Plaint was continued here till the said Morrow of the *Holy Trinity*, the said (Plaintiff) took one *A. H.* to be her Husband, * *who is now alive, to wit*, at *L.* in the County aforesaid; and this he is ready to verify, &c.

*Note; These Words are not in the Precedent, but they ought to be mentioned, and are therefore here inserted.

K. B. or C. B.

For that the Defendant is and was Sole Tenant.

(21.) And the said *A.* and *B.* plead, that the said *C.* ought not to have his Seisin aforesaid, because the said *A.* saith, That he is Tenant of the Tenements aforesaid, with the Appurtenances, (demanded against him and the said *B.*) as of a Freehold, and was so at the Time of the Issuing forth of the Original Writ of the said *C.* and ever since hath been; **Without that**, that the said *B.* then, or at any Time after, had any Thing therein; and this he is ready to verify: Wherefore he prays Judgment of the Writ,

Writ, and that it may be quaſhed, &c. And he further pleads, that he was never ſummoned according to the Law of the Land, &c. and prays that he may be admitted to perfect his Law of the whole Tenements aforeſaid; and the ſaid *B.* pleads, that he is ſole Tenant of the Tenements aforeſaid *(as above)*.

Non-Summons, and a Wager at Law.

(22.) And the ſaid *C.* replies, that he ought not to be delayed from having his Seiſin of the Tenements aforeſaid, with the Appurtenances, becauſe he ſaith, that at the Day of Iſſuing forth of the Original Writ aforeſaid *(to wit) ſuch a Day and Year*, the ſaid *A.* and *B.* were Tenants of the Tenements aforeſaid, with the Appurtenances, as of a Freehold in Common, as it is ſuppoſed by the Writ aforeſaid; and this he prays may be inquired of by the Country, and the ſaid *A.* and *B.* do likewiſe the ſame.

Replication, that he was Tenant in Common.

3 Inſtr. Cl. 99.
2 Brown 42.
Raſt. 221, 272, 273. 282, 364, 365, 419.

(23.) And the ſaid *(Defendant)* pleads, that the ſaid *(Plaintiff)* at the Time, when the ſaid Treſpaſs is ſuppoſed to be done, had nothing in the ſaid Meſſuage, &c. newly aſſigned, unleſs in common with *J. G.* who is now alive (that is to ſay) at *N.* aforeſaid; and this he is ready to verify: Wherefore, and inaſmuch as the ſaid *J. G.* is not named in the ſaid Writ, the ſaid *(Defendant)* prays Judgment of the Writ, and that the ſame may be quaſhed, &c.

For that the Plaintiff was **Tenant** in **Common** at the Time of the Treſpaſs.

(24.) (*As in others, to the Words* ought not to be quaſhed,) becauſe ſhe ſaith, that ſhe now is, and, at the Time of committing the Treſpaſs aforeſaid, was ſole ſeized of that ſaid Meſſuage, with the Appurtenances newly aſſigned in his Demeſne as of Fee; **Without that**, that the ſaid *J. G.* then had any Thing in the ſaid Meſſuage, &c. with the Appurtenances newly aſſigned; and this he prays may be enquired of by the Country, &c.

Replication.

3 Inſtr. Cl. 93.
Hanſ. 103.
Thom. 12.

K. B.

For that the Plaintiff was at the Time of the Treſpaſs Joint-Tenant with another not named. In part Not guilty.

(25.) And the ſaid (*Defendant*) by *J. S.* his Attorney, comes and defends the Force and Injury; and as to coming with Force and Arms, and whatever elſe is againſt the Peace of our Sovereign Lord the King, he the ſaid (*Defendant*) pleads, that he is not guilty thereof, as the ſaid (*Plaintiff*) above complains againſt him; and thereof he puts himſelf upon the Country, and the ſaid (*Plaintiff*) does likewiſe the ſame. And as to the Reſidue of the ſaid Treſpaſs, above ſuppoſed to be done, the ſaid (*Defendant*) prays Judgment of the Bill, becauſe he ſaith, that the Cloſe and Houſe aforeſaid, and alſo the Places wherein the ſaid Treſpaſs is ſuppoſed to be done, are, and at the ſaid Time when, &c. were three Meſſuages, and ſixty Acres of Land, with the Appurtenances, in *N.* aforeſaid; and that at the ſaid Time, when the ſaid Treſpaſs is ſuppoſed to be committed, he the ſaid (*Plaintiff*) had nothing in the ſaid Tenements, unleſs jointly and undivided with one *J. W.* who is now alive (to wit) at *N.* aforeſaid: Wherefore, inaſmuch as the ſaid *J.* is not named in the ſaid Bill, the ſaid (*Defendant*) prays Judgment of the Bill, and that it may be quaſhed, &c.

Plea to the reſt.

3 Inſtr. Cl. 59.

Replication and Iſſue.

(26.) And the ſaid *M.* replies, that his Bill aforeſaid ought not to be quaſhed, for the Reaſon above alledged, becauſe he ſaith, that at the Day of the Exhibiting of the Bill aforeſaid, (to wit) on the 22d Day of *March*, in the ſeventh Year of the Reign of our ſaid Sovereign Lord the King, the ſaid *B.* was Tenant as of a Freehold of the ſaid Manor, with the Appurtenances, as it is ſuppoſed by the Bill aforeſaid; and this he prays may be enquired of by the Country; and the ſaid *B.* doth likewiſe the ſame.

3 Inſtr. Cl. 88. Cl. Aſſ. 8. Bro. Met. 459.

C. 15.

(27.) And the ſaid *John*, by *J. S.* his Attorney; and the ſaid *Henry*, by *J. N.* his Attorney, come and defend the Force and Injury, and ſay, that the ſaid *R.* is not intitled to an Anſwer to his ſaid Writ of Privilege, or to have the ſame allowed by this Court; becauſe they ſay, That the ſaid *R.* before the ſuing out of the ſaid Writ (to wit) in *Trinity Term*, in the ſecond Year of the Reign of his preſent Majeſty, came here into this Court, by *J. N.* his Attorney, and exhibited his Bill to the Juſtices here, againſt the ſaid *R.* by the Name of *R. L.* Gent. one of the Attornies of his ſaid Majeſty's Court of this Bench, perſonally preſent here in this Court of a Plea (or *in an Action*) of Debt; the Tenour of which Bill is in the following Words: *To the Juſtices of his Majeſty's Court of Common Pleas*: Suffolk, *to wit*, H. B. *by* J. N. *his Attorney, complains of* R. N. *Gent. one of the Attornies*, &c. (*and ſo on to the End of the Bill, adding the Pledges; and then ſay*; Whereupon the ſaid *Robert*, the Duty of whoſe Office of an Attorney requires him to be preſent in this Court, although ſolemnly called to appear and attend the Duty of his Office of an Attorney in this Court, came not, nor hath ſhewn to this Court any Cauſe or Reaſon for his Abſence: Therefore it was conſidered (or *adjudged*) that the ſaid *R.* for his Contempt in that Behalf, ſhould be forejudged from executing the ſaid Office of an Attorney at preſent, and be totally ſtruck out of the Roll of Attornies of this Court, until, &c. as by the Record and Proceedings thereof now remaining in this Court more fully appears; which ſaid Judgment yet remains in its full Force and Effect, not revoked, reverſed, or annulled; by reaſon whereof the ſaid *R.* on the Day of his ſuing forth of his ſaid Writ of Privilege, was, and before had, and ever ſince to this Time hath been, and now is totally removed and deprived of his Office, as

A Plea to an Action brought upon a Writ of Privilege, that the Plaintiff was forejudged.

The Bill againſt the Attorney.

The Forejudger.

Traverſe.

as one of the Attornies of this Court; Without that, that the ſaid *Robert* is, or at the Time of ſuing forth of his ſaid Writ of Privilege was, or at any Time ſince hath been, or now is one of the Attornies of his ſaid Majeſty's Court of Common Pleas here, as he doth above ſuggeſt by his ſaid Writ; and this he is ready to verify, as the Court, *&c.* Wherefore he prays Judgment, whether he ought to anſwer to the ſaid Writ, or whether the ſaid *R.* ſhall be admitted to have his Privilege, as one of the Attornies of this Court, *&c.*

Where two plead ſeverally, that one of the Plaintiffs hath an Addition of Dutcheſs in the Writ; whereas ſhe loſt her Dignity by marrying a Perſon of an inferiour Degree.
1 Brown 3.

(28.) And the ſaid Biſhop and *N. M.* by *J. M.* their Attorney, come and defend the Force and Injury; and the ſaid Biſhop prays Judgment of the aforeſaid Writ, becauſe he ſaith, that it appears by the ſaid Writ, that the aforeſaid *F.* now the Wife of the ſaid *A. S.* is named in the ſaid Writ the Lady Dutcheſs of *Suffolk*; whereas by the Law of the Land of this Kingdom of *Great Britain*, ſhe the ſaid *F.* by her ſaid Marriage had, ſolemnized, and conſummated between her and the ſaid *A. S.* loſt the Name of her Dignity of Lady Dutcheſs of *Suffolk*, and ought only to have been named *F.* the Wife of the ſaid *A. S.* and this he is ready to verify: Wherefore, inaſmuch as the ſaid *F.* is named in the ſaid Writ Lady Dutcheſs of *Suffolk*, the ſaid Biſhop prays Judgment of the ſaid Writ, and that the ſame may be quaſhed. And the ſaid *N. M.* likewiſe prays Judgment of the ſaid Writ, becauſe he likewiſe ſaith, that it appeareth by the ſaid Writ, that the ſaid *F.* Wife of the ſaid *A. S.* is therein named Lady Dutcheſs of *Suffolk*; whereas by the Law of this Kingdom of *Great Britain*, the ſaid *F.* by reaſon of her ſaid Marriage had and ſolemnized between the ſaid *A. S.* and her, totally loſt and deprived herſelf of the Name of her Dignity of Lady Dutcheſs of *Suffolk*, and ought not to be named in the ſaid Writ Lady Dutcheſs of *Suffolk*, but ought only to have been named *F.* the Wife of the ſaid

A. S. Wherefore inaſmuch as the ſaid *F.* is named in the ſaid Writ, Lady Dutcheſs of *Suffolk*, the ſaid *N. M.* likewiſe prayeth Judgment of the ſaid Writ, and that it may be quaſhed.

Pleas to the Perſon of the Defendant.

C. B.

(29.) And the ſaid *B.* by *C. D.* her Attorney, comes and prays Judgment of the Writ aforeſaid; and pleads, that ſhe now is, and before the Day of the Iſſuing forth of the Original Writ of the ſaid *A.* to wit, on the 10th Day of *December*, in the Seventh Year of the Reign of our Sovereign Lord the King that now is, at *H.* in the County aforeſaid, was covert with, (or *married to*) one *S. G.* her Husband, who is now alive (to wit) at *H.* aforeſaid; and this ſhe is ready to verify: Wherefore ſhe prays Judgment of the ſaid Writ ſued out and proſecuted againſt the ſaid *B.* as a *Feme Sole*, in the manner aforeſaid, and that the Writ may be quaſhed, *&c.*

Coverture in the Defendant.
2 Mo. Intr. 7.

(30.) And the ſaid *A.* replies, that his Writ aforeſaid ought not to be quaſhed, by reaſon of any Thing above alledged, becauſe he ſaith, that the ſaid *B.* on the Day of ſuing out the ſaid Original Writ of him the ſaid *A.* that is to ſay, on the 10th Day of *November* in the Seventh Year of the Reign of his ſaid preſent Majeſty, at *S.* aforeſaid, was a Feme Sole; **Without that**, that the ſaid *B.* on the Day of the Suing out of the Original Writ of him the ſaid *A.* was Covert of the ſaid *M.* her ſaid Husband, as the ſaid *B.* hath above alledged in her ſaid Plea; and this he is ready to verify: Wherefore, and inaſmuch as the ſaid *B.* doth not deny the Action aforeſaid of him the ſaid *A.* he prays Judgment, and his Debt aforeſaid, together with his Damages occaſioned by detaining the ſame, to be adjudged to him, *&c.* [*If it be pleaded to an Action upon the Caſe upon*

A Replication, that the Defendant was Sole at the Time of purchaſing the Writ.
Bro. Red. 204.

an Aſſumpſit, *then you ſay,*] prays Judgment, and his Damages occaſioned by the Non-performance of the ſaid Promiſe, (or *Promiſes, as the Caſe is*) to be adjudged to him, *&c.*

A Rejoinder and an Iſſue upon the Coverture. Brownl. Red. 204.

(31.) And the ſaid *B.* as before, rejoins, that ſhe on the Day of Suing out the Original Writ of the ſaid *A.* was Covert of the ſaid *M.* her Huſband, as ſhe the ſaid *B.* hath above alledged; and thereof ſhe puts herſelf upon the Country; and the ſaid *A.* does likewiſe the ſame.

Note; *In* Regula Placitandi 290, *there the Replication is thus:*

A Replication, that ſhe was Covert, without a Traverſe.

(32.) And the ſaid *A.* replies, that his ſaid Writ ought not to be quaſhed, by any Thing above alledged, becauſe he ſaith, that ſhe the ſaid *B.* on the Day of Suing out the Original Writ of the ſaid *A.* that is to ſay, (*on ſuch a Day and Year*) was not Covert of the ſaid *M.* her Husband, as the ſaid *B.* hath above alledged; and this he prays may be inquired of by the Country, and the ſaid *B.* does likewiſe the ſame.

A Plea in Abatement to an Action for Words, that the Plaintiff is the Defendant's Wife.

(33.) And the ſaid *F.* by *Samuel Buck*, his Attorney, comes and defends the Force and Injury; and ſaith, that the ſaid *E.* at the ſaid Time, when it is ſuppoſed the Words ſpecified in the abovementioned Writ and Declaration were ſpoken, was, and long before the Day of Suing out the Original Writ of the ſaid *E.* had been, and now is, the Wife of the ſaid *F.* and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ, and that the ſame may be quaſhed, *&c.*

John Godbold.

A Replication, that ſhe was never the Wife of the Defendant, and an Iſſue thereon.

(34.) And the ſaid *E.* replies, that her ſaid Writ ought not to be quaſhed in this Caſe for the Reaſon above alledged, becauſe ſhe ſaith, that ſhe the ſaid *E.* either at the Time of the Speaking and Publiſhing the ſaid Words above ſpecified in her ſaid Writ and Declaration, or at the Day of the Suing

Suing out of the Original Writ of her the ſaid *F.* was not, nor now is the Wife of the ſaid *F.* as he the ſaid *F.* hath above alledged; and this ſhe prays may be inquired of by the Country; and the ſaid *F.* doth likewiſe the ſame. *Hill.* 17 *Car.* 1. *Rol.* 2180. 1 Brown 63.

B. K.

(35.) And the ſaid *A.* in his own Perſon, comes and pleads, that he now is, and at the Time of Exhibiting the Bill aforeſaid was, and long before had been one of the Attornies of the Court of Common Pleas of our Sovereign Lord the King, at *Weſtminſter*, in the County of *Middleſex*, as by the Writ under Seal of the ſame Court appears; and that as an Attorney for many of the King's Subjects, he is now proſecuting and defending divers Suits and Actions in his ſaid Majeſty's Court of Common Pleas; and that he the ſaid *A.* or any other Attorney of that Court, whilſt they are ſo proſecuting or defending any Cauſes there, by an antient Cuſtom, Time out of Mind uſed and approved of in the ſaid Court, ought not, contrary to their Will, to be drawn into, or compelled to anſwer before any of his Majeſty's Judges or Miniſters, or any Secular Judges whatſoever, ſave and except before his ſaid Majeſty's Juſtices of the ſaid Court of Common Pleas, in any Actions, Complaints or Demands, which do not relate to his Majeſty's Perſon, (Pleas relating to Freeholds, Felonies, and Appeals only excepted); and this he is ready to verify: And therefore apprehends that this Court will not, nor ought not, to take Cognizance of the Action here depending againſt him, *&c.* An Attorney's Privilege. Mo. Intr. 7. 3 Inſtr. Cl. 34.

(36.) And the ſaid *B.* replies, that this Court of our ſaid Sovereign Lord the King now here, may take Cognizance of the Action aforeſaid, againſt the ſaid *A.* notwithſtanding any Thing above alledged by the ſaid *A.* in his Plea aforeſaid; becauſe he ſaith, that after the Exhibiting A Replication, that the Defendant was forejudged the Court, and removed from his Office.

3 Inſtr. Cl. 35, 36.

of the ſaid Bill of the ſaid *B.* in this Court of our ſaid Sovereign Lord the King, before the King himſelf, againſt the ſaid *A.* (that is to ſay) *(in ſuch a Term)* laſt paſt, the ſaid *A.* by the Conſideration of the then Juſtices of the ſaid Court of Common Pleas at *Weſtminſter* aforeſaid, was, and now is forejudged and amoved from Exerciſing his Office of an Attorney of the ſame Court of Common Pleas at *Weſtminſter* aforeſaid; whereby the Privilege of the ſaid Defendant, as an Attorney in the ſame Court, did from thence, and now doth ceaſe, as by the Record thereof now remaining in the ſame Court of Common Pleas, before the Juſtices of that Court at *Weſtminſter* aforeſaid, may manifeſtly appear; and this he is ready to verify: Wherefore he prays Judgment, and that the Court of our ſaid Sovereign Lord the King, may take Cognizance of the Action aforeſaid, againſt the ſaid *A.* and that the ſaid *A.* may give a further Anſwer to the Bill of him the ſaid *B*, *&c.*

A Prayer, that the Defendant may anſwer over.

A Rejoinder, that there is no ſuch Record of the Fore-judgment.

(37.) And the ſaid *A.* rejoins, that this Court of our ſaid Sovereign Lord the King now here, ought not to take further Cognizance of the ſaid Action againſt him the ſaid *A.* becauſe he ſaith, that there is not any ſuch Record of a Forejudger and Removal of the ſaid *A.* from Exerciſing his ſaid Office of an Attorney of the Court of Common Pleas of our ſaid Sovereign Lord the King (*of ſuch a Term*) now remaining in the ſaid Court of Common Pleas at *Weſtminſter*, as the ſaid *B.* hath above in his Replication alledged; and this he is ready to verify: Wherefore he prays Judgment as before; and that the Court of our ſaid Sovereign Lord the King now here, may not take any further Cognizance of the ſaid Action againſt the ſaid *A. &c.*

A Surrejoinder, that there is ſuch a Record, &c.

(38.) And the ſaid *B.* pleads by Way of Surrejoinder, that there is ſuch Record (*uſing the Words above mentioned in the Rejoinder, to the Words,*) as the ſaid *B.* hath above in his ſaid Repli-

Replication alledged; and this he is ready to verify by the Record itſelf; and the ſaid *B.* is here directed by this Court of our ſaid Sovereign Lord the King, that he have that Record before our ſaid Sovereign Lord the King at *Weſtminſter (on ſuch a Day)* at his Peril. The ſame Day is given to the ſaid Parties to be there, *&c.*

(39.) ——— comes and pleads, that he now is, and at the Time the ſaid *A.* exhibited his ſaid Bill was, and long before had been, one of the Philizers of the Court of Common Pleas of our Sovereign Lord the King at *Weſtminſter*, in the County of *Middleſex*; and that by Virtue of an antient and immemorial Cuſtom, any Philizer of that Court ought not, contrary to his Will, *&c.* (*as in the Plea next above to the End, and to be pleaded* ſub pede Sigilli, *as we apprehend).*

Philizer's Privilege of the Court of Common Pleas pleaded in the Court of King's Bench.

(40.) ——— comes and pleads, that this Court ought not to have Cognizance of this Action, and ſaith, that the Cuſtom of the Court of Chancery of our Sovereign Lord the King of his Kingdom of *England* now is, and Time out of Mind hath been, that the Maſters and Clerks of the Court of Chancery of our Sovereign Lord the King that now is, and of his Predeceſſors, heretofore Kings and Queens of *England*, their Servants and Officers ſhould not be attached, diſtrained, or taken, nor in any manner whatſoever compelled to anſwer to any Perſon in any Action or Suit in this Court, or before any Judges or Miniſters of our ſaid Sovereign Lord the King, or any other Secular Judges whatſoever, except before the King himſelf in his ſaid Court of Chancery, in any Actions, Treſpaſſes, Complaints, or Demands (Actions relating to the King's Perſon, to Freeholds, Felonies, and Appeals only excepted); which ſaid Court of Chancery now hath, and during the Time aforeſaid hath had Juriſdiction to hold Plea of and determine all Actions and Suits relating to the ſaid Maſters and Clerks of the ſaid Court of Chancery, their Servants and Miniſters (except as before

A Clerk in Chancery's Privilege.

excepted) and the ſaid (*Defendant*) pleads, that he now is, and at the Time the ſaid *A.* exhibited his ſaid Bill was, and long before had been one of the Clerks of *E. F.* Eſq; one of the Six Clerks of his ſaid Majeſty's Court of Chancery, whoſe conſtant Attendance is there required; and that he is now drawn in to anſwer the ſaid *A.* in this Court, in this Action, contrary to his Will and the Privilege and Cuſtom aforeſaid: And therefore he apprehends this Court will not, nor ought not further to take Cognizance of this Action, *&c.*

C. B.

Privilege of the Marſhal of B. R. pleaded. 2 Brown 60.

(41.) And the ſaid Sir *E. R.* Knt. pleads, that he ought not to anſwer the Declaration of the ſaid *J. G.* for that he the ſaid *E.* ſaith, that he, long before the Iſſuing forth of the Attachment out of this Court againſt him the ſaid *E.* to anſwer to the ſaid *J. G.* in the ſaid Action, had, and continually hitherto hath been and now is Marſhal of the Marſhalſea of our Sovereign Lord the King, before the King himſelf; and that he the ſaid *E.* by reaſon of his Office aforeſaid, hath and ought to have the Cuſtody of all Priſoners committed and to be committed to his Cuſtody by the Court of our ſaid Sovereign Lord the King, before the King himſelf, to be ſafely kept, according to the Duty of his Office, at his Peril; which is ſo great a Charge upon him, that he daily attends and ought to attend in his ſaid Office before his ſaid Majeſty: And the ſaid *E.* further ſaith, that the Marſhal of the Marſhalſea of our Sovereign Lord the King, before the King himſelf for the Time being, by reaſon of his ſaid Office, and by means of his keeping the Priſoners committed and to be committed to him, as aforeſaid, and by reaſon of his conſtant Attendance before his ſaid Majeſty in his ſaid Office, ought not to be drawn in to plead in any Action, or to be ſued by any Writ, in any Action, (Actions of Freehold only excepted); and this he is ready to verify: And

prays,

prays, that he may be discharged from his further Attendance on this Court; and that he may not be compelled to answer the said Declaration in the Action aforesaid, &c.

Note, *That upon a General Demurrer Judgment was given for the Plaintiff, he being privileged.*

Plea, that the Defendant is Executor, and not Administrator. Pl. Gen. 12.

(42.) And the said *D.* comes and defends the Force and Injury, and pleads, that the said *A.* died at *L.* Intestate; after whose Death, to wit, (*such a Day and Year*) *O. S.* Commissary, &c. (*mentioning whom*) sequester'd all the Goods and Chattels of the said *A.* and by his Letters Ordinary at *L.* committed them to him the said *D.* to be administered, and ordained, made and constituted him the said *D.* Administrator of the said Goods and Chattels; by means whereof the said *D.* administered the several Goods and Chattels, that were the Goods and Chattels of the said *A.* at the Time of his Death, and which came to the Hands of the said *D.* after the Death of the said *A.* and after the Commission of the said Administration to the said *D.* as aforesaid; in which Case the said (*Plaintiff*) ought to have sued out his Writ aforesaid against him the said *D.* as Administrator of the Goods and Chattels, which were of the said *A.* who died Intestate, and not as Executor of the Will of the said *A.* and this he is ready to verify: Wherefore, he prays Judgment of the Writ aforesaid, and that it may be quashed, &c.

Replication thereto.

(43.) And the said *C.* replies, that the said Writ ought not to be quashed, because he saith, that the said *D.* did, after the Death of the said *A.* administer divers Goods and Chattels of the said *A.* as Executor of his Testament; **Without that**, that the said *A.* died Intestate, as the said *D.* hath above in his Plea alledged: Wherefore, and for the Insufficiency of the Plea of the said *D.* he prays Judgment, and his said Debt, together with his Damages occasioned by detaining thereof, to be adjudged to him, &c.

B. B.

A Plea by an Adminiſtrator, that the Adminiſtration is revoked by Sentence. Thompſon's Entr. 221.

(44.) And the ſaid *C.* by *J. S.* his Attorney, comes and prays Judgment of the ſaid Bill, becauſe he ſaith, that after *Monday* next after three Weeks of St. *Michael* laſt paſt, (on which Day the ſaid Bill was exhibited) to wit, the 4th Day of *November*, in the ſaid 8th Year of the Reign of his preſent Majeſty, the Letters of Adminiſtration of the Goods and Chattels that were of the ſaid *J. B.* at the Time of his Death, before that Time obtained by the ſaid *J. G.* at the Inſtance of one *G. B.* Widow and Relict of the ſaid *J. B.* by Sir *W. M.* Knt. Doctor of Laws, the Commiſſary in that Behalf authoriſed in the Chamber of the Lords Advocates of *London*, in the Pariſh of *C.* were there revoked in due Form of Law; and by the ſaid *W. M.* the competent Judge in that Behalf, as aforeſaid, were then and there pronounced and declared Null and Void to all Intents and Purpoſes; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Bill, and that it may be quaſhed, *&c.*

Replication, An Appeal to Delegates.

(45.) And the ſaid *J. G.* ſaith, that for any Thing above alledged by the ſaid *C.* in his Plea, the Bill of him the ſaid *J.* ought not to be quaſhed, becauſe he ſaith, that after the Pronouncing of the ſaid Sentence of Revocation of the ſaid Adminiſtration againſt him the ſaid *J.* by the ſaid *W. M.* (to wit) on the 4th Day of *November*, in the 8th Year of the Reign of his ſaid preſent Majeſty, the ſaid *G.* in the ſaid Chamber of the ſaid Lords Advocates in the ſaid Pariſh of *C.* did in due Form of Law appeal to his ſaid Majeſty in his Court of Chancery, from the ſaid Court, and alſo from the ſaid *W. M.* being the ſaid Judge, as aforeſaid; and more eſpecially from the ſaid Sentence of Revocation of the ſaid Letters of Adminiſtration rightfully and lawfully granted, with due Cauſe of Cognizance, by the ſaid *W. M.* to the ſaid *J.* only, as an iniquitous,

quitous, unjuſt, and injurious Sentence; which ſaid Appeal was then and there allowed by the ſaid *W. M.* and was received and accepted by his ſaid Majeſty, in his ſaid Court of Chancery at *Weſtminſter*; and thereupon his ſaid Majeſty, by his Letters Patent of Commiſſion under the Great Seal of *England*, dated at *Weſtminſter* the 15th Day of *November*, in the ſaid 8th Year of his ſaid Majeſty's Reign, to his beloved (*naming the Judges*) directed, (*and ſo go on and ſet out the Subſtance of the Commiſſion*) as by the ſaid Letters Patent more fully may appear; and the ſaid *J. G.* further ſaith, that the ſaid *O. B. &c.* (*naming the Commiſſioners*) afterwards, to wit, on the 15th Day of *November*, in the ſaid 8th Year of the Reign of his ſaid Majeſty, at *W.* received and accepted of the ſaid Commiſſion and Appeal; which Appeal before the ſaid *O. B. &c.* (*naming the Judges*) at *Weſtminſter* aforeſaid, is ſtill depending not diſcuſſed or determined; whereby, according to the Civil Law of this Kingdom of *England*, the ſaid Sentence for revoking the ſaid Letters of Adminiſtration, granted to the ſaid *J. G.* as aforeſaid, is of no Force or Effect in the Law; and this he is ready to verify: Wherefore he prays Judgment, and his ſaid Debt, together with his Damages occaſioned by detaining the ſame, to be adjudged to him, *&c.*

Appeal accepted.

Commiſſion.

Commiſſioners accept Commiſſion and Appeal.

Appeal ſtill depending.

(46.) And the ſaid *A.* and *M.* by *T. H.* their Attorney, come and defend the Force and Injury, and pray Judgment of the Bill of the ſaid *D.* now exhibited againſt them, and plead that the ſaid *W. C.* after the making of the Penal Bill aforeſaid, to wit, on the 20th Day of *March*, in the Year of our Lord 1730, at *F.* aforeſaid, in the County aforeſaid, died Inteſtate, after whoſe Death, Adminiſtration of all and ſingular the Goods, Chattels, Rights, and Credits, that were of the ſaid *W. C.* at the Time of his Death, was by, *&c.* (*Inſert the Name and Title of the Ordinary*) on the 20th Day of *May* in the Year of our Lord 1731. at *F.* in the ſaid County of *D.* duly

A Plea, that Defendant is Adminiſtratrix, and not Executrix. Pl. Gen. 2, 3. 6. Clift 15, 16. Tho. 221.

duly committed to the ſaid *M.* in which Caſe the ſaid *M.* according to the Laws of this Kingdom ought to have been impleaded by the ſaid Bill of the ſaid *D.* as Adminiſtratrix of all and ſingular the Goods, Chattels, Rights, and Credits of the ſaid *W. C.* and this they are ready to verify: Wherefore, inaſmuch as the ſaid *M.* is in the ſaid Bill of the ſaid *D.* named Executrix of the Teſtament of the ſaid *W. C.* and not Adminiſtratrix of the Goods and Chattels of the ſaid *W. C.* they the ſaid *A.* and *M.* pray Judgment of the ſaid Bill, and that it may be quaſhed, *&c.*

Note, *That the ſame Plea is pleaded in* 2 *Ventris* 178, *to which there was the following Replication.*

(47.) And the ſaid *C.* replies, that his ſaid Bill ought not to be quaſhed, by reaſon of any Thing before alledged, for that after the Death of the ſaid *J.* and before the granting of the ſaid Adminiſtration to the ſaid *M.* in the manner aforeſaid, to wit) on the 18th Day of *September*, in the 4th Year of the Reign of his preſent Majeſty, the ſaid *M.* adminiſtered divers Goods and Chattels, that were of the ſaid *J.* at the Time of his Death, as Executrix of his Teſtament, to wit, at the Pariſh of *S.* aforeſaid; and this he is ready to verify: Wherefore he prays Judgment, and his ſaid Debt, together with his Damages occaſioned by detaining the ſame, to be adjudged to him, *&c.*

Upon a General Demurrer to the Replication and Joinder, Judgment was given for the Plaintiff. Vid. 2 Ven. 178.

A Plea by Defendant ſued as Executor, that Adminiſtration was granted to another.

(48.) And the ſaid *B.* by *C. D.* his Attorney, comes and prays Judgment of the ſaid Bill, becauſe he ſaith, that the ſaid *E. F.* named in the ſaid Bill, upon the 15th Day of *June*, in the 5th Brownl. 221. Cl. Aſſ. 105.

Year

Year of his preſent Majeſty's Reign, at *L.* in the ſaid County of *N.* died Inteſtate; after whoſe Death, to wit, on the 1ſt Day of *May*, in the 6th Year of his ſaid Majeſty's Reign, Adminiſtration of all and ſingular the Goods, Chattels, Rights, and Credits, that were of the ſaid *E. F.* at the Time of his Death, by *G.* by Divine Providence Archbiſhop of *Canterbury*, Primate of all *England*, and Metropolitan, at *L.* in the ſaid County of *N.* was duly committed to one *A. B.* as by the Letters of Adminiſtration brought into this Court may appear; by Virtue of which the ſaid *A.* did afterwards there adminiſter divers Goods and Chattels of the ſaid *E. F.* as Adminiſtrator of the ſaid *E. F.* **Without that**, that the ſaid *B.* is Executor of the Teſtament of the ſaid *E. F.* or ever adminiſtered any of the Goods or Chattels of the ſaid *E. F.* as Executor of his Teſtament, in the Manner and Form, as the ſaid *W.* doth above ſuggeſt in his ſaid Bill; and this he is ready to verify, *&c.*

Pleas in Abatement for Variance.

C. B.

(49.) And the ſaid *B.* in his own Perſon, or *perſonally*, comes and defends the Force and Injury, and craves Oyer of the Original Writ aforeſaid, and it is read to him in theſe Words, *George*, *&c.* which being read and heard, the ſaid *B.* prays Judgment thereof, and pleads, that there is a Variance between the ſaid Writ and the Declaration thereupon in this Particular, (that is to ſay) that the ſaid *A.* is named in the ſaid Writ by the Name of *A. S.* and in the Declaration founded thereon, by the Name of *A. T.* Wherefore, inaſmuch as there is ſuch a Variation between the ſaid Writ and the ſaid Declaration, in the Surname of him the ſaid *A.* he the ſaid *B.* prays Judgment of the Declaration aforeſaid, and that it may be quaſhed, *&c.*

Variance between the Writ and Declaration.
3 Inſtr. Cl. 39. 45. Reg. Pl. 277. Q. 2 Mo. Intr. 8, 9.

(50.) And

Replication, that the Defendant ought not to be admitted to plead a Variance between the Bond and Declaration, after a General Imparlance. 2 Mo. Intr. 200.

(50.) And the ſaid *A.* replies, that the ſaid *B.* ought not to be admitted to plead a Variance between the ſaid Writ and Declaration, in the manner and Form as the ſame is above made and ſet forth, and the ſaid Obligation brought into this Court, becauſe he ſaith, that he the ſaid *A.* heretofore in *Hillary Term*, in the 8th Year of the Reign of his preſent Majeſty, declared in this Court againſt the ſaid *B.* upon the ſaid Obligation in the manner aforeſaid, to which ſaid Declaration, ſo as aforeſaid made and ſet forth, the ſaid *B.* in this ſame Court prayed Leave to imparl until this Day, to wit, from the Day of *Eaſter* in 15 Days, and then to anſwer to the ſaid *A.* in the ſaid Action, and he had Leave, *&c.* as appears by the Roll, Number 672, of the ſaid *Hillary Term*, in the aforeſaid 8th Year of his ſaid Majeſty's Reign; and this he is ready to verify: And therefore prays Judgment, whether the ſaid *B.* can be admitted to plead a Variance between the ſaid Obligation and Declaration, *&c.*

B. K.

Between the Writ and Bill. 1 Bro. 3. 2 Mo. Intr. 10.

(51.) ——— Which ſaid Writ being read and heard, the ſaid *B.* prays Judgment thereof, and pleads, that there is a Variance between the ſaid Writ and the ſaid Bill upon which the Writ iſſued; for that in the ſaid Writ the ſaid *A.* is called by the Name of *A. D.* Whereas in the ſaid Bill he is called by the Name of *A. E.* and this the ſaid *B.* is ready to verify: Wherefore, and inaſmuch as there is a Variance between the ſaid Writ and the Bill upon which the ſaid Writ iſſued, the ſaid *B.* prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

C. B.

Between the Writ and Specialty, where

(52.) ———Which Writ being read and heard, the ſaid *B.* prays Judgment of the Writ aforeſaid, Oyer of the Writ is demanded.

and

and pleads, that in the Writing Obligatory, upon which the ſaid Writ was iſſued forth, he is called by the Name of *B. S.* of *T.* in the County of *D.* Yeoman, and in the ſaid Writ he is called and named *B. S.* of *E.* in the County of *D.* Gent. Wherefore, and foraſmuch as there is a manifeſt Variance between the ſaid Writ and Writing Obligatory upon which the ſaid Writ iſſued, the ſaid *B.* prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

2 Mo. Int. 10. 3 Inſtr. Cl. 39. 100. Cl. Aſſ. 2, 3. Reg. Pl. 278. 281. Aſh 3. 4.

(53.) And the ſaid *B.* by *C. D.* his Attorney, comes and prays Judgment of the ſaid Writ, and pleads, that there is a Variance between the Deed brought into this Court, and the Original Writ iſſued upon the ſame Deed; for that he the ſaid *B.* is by that Deed called and named *B. S.* of *T.* and this he is ready to verify: Wherefore, and inaſmuch as there is a Variance between the ſaid Writ and Deed aforeſaid, upon which the ſaid Writ iſſued, the ſaid *B.* prays Judgment of the ſaid Writ; and that it may be quaſhed, *&c.*

The like without Oyer of the Writ. 2 Mo. Intr. 10.

(54.) And the ſaid *B.* in his own Perſon, comes and prays Oyer of the ſaid Original Writ of the ſaid *A.* and 'tis read to him in theſe Words: (*George*, &c.) which being read and heard, the ſaid *B.* prays Judgment of the ſaid Writ; for that, he ſaith, that the ſaid Writ doth not agree with the Form of the Regiſter in that Caſe made and provided; but that the ſaid Writ wants the Word (*Witneſs*); and this he is ready to verify: And thereupon prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

Variance between Writ and Regiſter. 2 Mo. Intr. 10. Reg. Pl. 276.

B. R.

(55.) ——— Comes and prays Judgment of the ſaid Writ, and pleads, that the ſaid Writ is not rightly framed, according to the Form of the Regiſter of Original Writs of Aſſize; for that according to the Form of the Regiſter the Word

The like without Oyer, and for divers Variances. 2 Mo. Intr. 10.

Word ( ) contained in the ſaid Writ ought to have been ( ); and alſo that in the ſaid Writ there are two ſeveral Words, which have no Signification (to wit) and the ſaid Writ wants the Word ( ) and is returnable and returned before our Sovereign Lord the King at *Weſtminſter*, in fifteeen Days from the Day of St. *Martin*; whereas, according to the Form of the ſaid Regiſter, and alſo according to the due Courſe of the Laws of this Kingdom, the ſaid Writ ought to have been returnable before our ſaid Sovereign Lord the King, whereſoever, *&c.* and not at *Weſtminſter*, or any other certain Place, and therefore the ſaid Writ is inſufficient in Law; and this the ſaid *P.* is ready to verify: And thereupon prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

C. B.

Variance between the Writ and Teſtament.
2 Mo. Intr. 11. Cl. Aſſ. 14. Reg. Pl. 280. 3 Inſtr. Cl. 40, 42.

(56.) And the ſaid *B.* by *C. D.* his Attorney, comes and prays Oyer of the ſaid Original Writ of the ſaid *A.* and 'tis read to him in theſe Words, (*George*, &c.) Which being read and heard, the ſaid *B.* pleads, that the ſaid (the Teſtator) is named in the Writ *George Herne*, late of *S.* in the County of *N.* Gent. and in the Teſtament is named *George Herle* of *T.* in the County of *N.* Yeoman: Wherefore, and inaſmuch as the ſaid Writ varies from the ſaid Teſtament, and is not warranted thereby, the ſaid *B.* prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

Between the Writ and Letters of Adminiſtration.
2 Mo. Intr. 11.

(57.) ——— Comes and prays Oyer of the ſaid Original Writ, and 'tis read to him in theſe Words, (*George*, &c.) which being read and heard, the ſaid *B.* prays Judgment of the ſaid Writ, and pleads, that in the ſaid Letters of the ſaid Archbiſhop, it is ſet forth, that Adminiſtration of all and ſingular the Goods and Chattels, which were the Goods and Chattels of *T. S.* (*alias F.*) at the Times of his Death, was committed to the ſaid

A. and in the ſaid Writ the ſaid Words *(alias F.)* are omitted; by reaſon whereof, it doth not appear by the ſaid Writ, but that *T. S.* named in the ſaid Writ, and the ſaid *T. S. (otherwiſe F.)* named in the ſaid Letters of the ſaid Archbiſhop, may be different Perſons; and this he is ready to verify; and thereupon prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

(58.) And the ſaid *B.* by *J. F.* his Attorney, comes and craves Oyer of the ſaid Original Writ of the ſaid *A.* and 'tis read to him in theſe Words, (*George*, &c.) which being read and heard, the ſaid *B.* prays Judgment of the ſaid Writ, and pleads, that the ſaid Original Writ bears Date at *Weſtminſter* the 7th Day of *May*, in the ſaid 13th Year of his preſent Majeſty's Reign, and was returnable and returned in this Court, from the Day of *Eaſter* in one Month; between which ſaid 7th Day of *May* and the ſaid one Month from the Day of *Eaſter*, the ſaid Return of the ſaid Writ, there was but fourteen Days, and no more; in which Caſe the ſaid Writ, being dated as aforeſaid, is not ſufficient in Law to oblige him to anſwer thereto; and this he is ready to verify by the ſaid Writ, now in this Court, returnable as aforeſaid: Whereupon he prays Judgment, and that the ſaid Writ may be quaſhed, *&c.*

For an Inſufficient Return of an Original. 2 Mo. Intr. 2.

(59.) And the ſaid *B.* by *J. G.* his Attorney, comes and prays Oyer of the ſaid Original Writ of the ſaid *A.* and 'tis read to him in theſe Words, to wit (*George*, &c.) which being read and heard, the ſaid *B.* prays Judgment of the ſaid Writ, and pleads, that the following Words, to wit (*and have you there*) are not inſerted in the ſaid Writ; and this he is ready to verify by the ſaid Writ: Wherefore, and inaſmuch as theſe Words, to wit (*and have you there*) are not inſerted in the ſaid Writ, as they ought to have been, but are omitted, the ſaid *B.* prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

For the Omiſſion of neceſſary Words in the Writ. 2 Mo. Intr. 2.

(60.)

B. R.

Miſnomer in the Defendant's Name of Baptiſm. 2 Mo. Intr. 2. Tho. 1. Pl. Gen. 8. 3 Inſtr. Cl. 68, 70. Clift 16.

(60.) ——— And ſhe, who by the ſaid Declaration is named *Mary*, in her own Perſon comes and pleads, that ſhe was baptized by the Name of *Margaret* and not *Mary*, and by the Name of *Margaret* hath always been called and known, and not by the Name of *Mary*, as by the Declaration is above ſuppoſed; and this ſhe is ready to verify: Wherefore ſhe prays Judgment, and that the ſaid Declaration may be quaſhed, &c.

C. B.

For **Miſnomer** in the Addition of the Defendant. Mo. Intr. 12.

(61.) And the ſaid *B.* in his own Perſon, comes and prays Oyer of the ſaid Original Writ of the ſaid *A.* and 'tis read to him in theſe Words, to wit (*George*, &c.) which being read and heard, the ſaid *B.* pleads, that he is, and upon the Day of Suing out the ſaid Original Writ, was, and long before had been a Butcher, and not a Husbandman, as by the ſaid Writ is above ſuppoſed; and this he is ready to verify: Wherefore, and inaſmuch as he is not named of the very Myſtery of which he really is, according to the Form of the Statute of Additions of Names and Surnames in Writs, wherein Proceſs of Outlawry lies, lately made and provided, the ſaid *B.* prays Judgment of the ſaid Writ, and that it may be quaſhed, &c.

Replication, that he was a Husbandman.

(62.) And the ſaid (*Plaintiff*) ſaith, that his Writ aforeſaid ought not to be quaſhed for the Reaſon above alledged, becauſe he ſaith, that at the Day of the Suing out the Original Writ of the ſaid *M. that is to ſay*, (*ſuch a Day and Year*) the ſaid *B.* was a Husbandman, as is ſuppoſed by the Writ; and this he prays may be enquired of by by the Country, &c.

(63.) And the ſaid *B.* in his own Perſon, comes and craves Oyer of the Original Writ of the ſaid *A.* and 'tis read to him in theſe Words, to wit, (*George*, &c.) which being read and heard, the ſaid *B.* prays Judgment of the ſaid Writ, and pleads, that he in the ſaid Writ is called by the Name of *B. C.* late of the Pariſh of St. *Anne*, *Weſtminſter*, in the County of *Middleſex*, Eſq; whereas in Truth and Fact there is a certain Pariſh within the County of *Middleſex*, called and known by the Name of the Pariſh of St. *Anne*, within the Liberty of *Weſtminſter*; but there was not in the ſame County of *Middleſex*, at the Time of the Iſſuing forth of the ſaid Original Writ, or at any Time ſince, any Pariſh, Vill, or Place, called or known by the Name of the Pariſh of St. *Anne*, *Weſtminſter* only, as the ſaid *A.* by his ſaid Writ above ſuppoſes; and this the ſaid *B.* is ready to verify: And therefore he prays Judgment of the ſaid Writ, and that it may be quaſhed, &c.

For Miſnaming the Pariſh. 2 Mo. Intr. 13.

(64.) And the ſaid *B.* by *G. H.* his Attorney, *ſetting forth Oyer of the ſaid Writ then*, which being read and heard, pleads, that there was not at the Time of Iſſuing forth of the ſaid Original Writ, nor at any Time ſince, any ſuch Perſon, called by the Name of *A. D.* as the Declaration above ſuppoſes; and this the ſaid *B.* is ready to verify: Wherefore he prays Judgment of the ſaid Writ, and that it may be quaſhed, &c.

That there is No ſuch Perſon in rerum Natura. 2 Mo. Intr. 13.

(65.) And the ſaid *M. O.* Attorney for the ſaid *A. D.* in his Name, and for him replies, that the ſaid Original Writ, for any Thing by the ſaid *B.* before alledged, ought not to be quaſhed; for that he ſaith, that at the Time of Suing out the ſaid Original Writ, to wit (*ſuch a Day and Year*) there was, and now is, a Perſon called *A. D.* as he by his ſaid Writ above ſuppoſes, to wit, at (*ſuch a Place*); and this the ſaid Attorney, for him the ſaid *A. D.* prays may be inquired of

Replication by Plaintiff's Attorney, and Iſſue thereupon. Mo. [illegible]. 13. [illegible]. 8. 3 [illegible]. 2, 771.

by the Country; and the ſaid *B.* doth likewiſe the ſame: Wherefore the Sheriff [*and ſo on to the Award of the* Venire, *&c.*]

No ſuch Village.
2 Mo. Intr. 14.
3 Inſtr. Cl. 77.

(66.) ——— Comes and prays Judgment of the ſaid Writ, and pleads, that at the Time of the Iſſuing forth of the ſaid Original Writ of the ſaid *A.* there was not, nor is there in the County aforeſaid, any Village or Hamlet, or Place out of a Village or Hamlet, called or known by the Name of *C.* as the ſaid *A.* by his Original Writ above ſuppoſes; and this he is ready to verify: And thereupon prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

Replication.
3 Inſtr. Cl. 82.
Raſt. 108.
Ro. Entr. 285.
2 Brown. 16.
Cl. Aſſ. 313.

(67.) And the ſaid *A.* ſaith, that his ſaid Writ ought not to be quaſhed by reaſon of any Thing above alledged, becauſe he ſaith, that in the County aforeſaid there is, and at the Day of Suing out the Original Writ aforeſaid of him the ſaid *A.* to wit, on [*ſuch a Day and Year*] there was a Vill, called and known by the Name of *C.* as is above ſuppoſed by the Writ aforeſaid; and this he prays may be inquired of by the Country.

By Miſnomer of the Surname.
1 Bro. 3.
Thomſon 1.
3 Inſtr. Cl. 67.
Reg. Pl. 288.

(68.) And the ſaid *R. J.* in his own Perſon, comes and pleads, that he is the ſame Perſon, againſt whom the ſaid *A.* hath brought his Writ, by the Name of *R. Johnſtone*, and defends the Force and Injury, and ſaith, that he now is, and ever ſince his Nativity hath been called and known by the Name of *R. Johnſon*, and not by the Name of *R. Johnſtone*, as by the ſaid Writ it is above ſuppoſed; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ, and that the ſame may be quaſhed, *&c.*

Replication.

(69.) And the ſaid *A.* replies, that his ſaid Writ ought not to be quaſhed, by reaſon of any Thing above alledged, becauſe he ſaith, that the ſaid *R. Johnſon*, who now appears to the ſaid Writ of him the ſaid *A.* is the ſame Perſon againſt

againſt whom he brought his ſaid Writ; and that the ſaid *R.* is called and known as well by the Name of *R. Johnſon*, as by the Name of *R. Johnſtone*; and this he prays may be inquired of by the Country; and the ſaid *R.* doth likewiſe the ſame.

(70.) And *A. B.* late of *J.* in the ſaid County, Gentleman; *C. D.* late of *M.* in the ſaid County, Yeoman; and *E. G.* late of *C.* in the ſaid County, Yeoman, come in their own Perſons, and ſeverally plead, that they are the ſame Perſons againſt whom the ſaid *G. H.* hath brought his ſaid Writ, by the Names of, *&c.* [*as in the Declaration*] and the ſaid *A. B.* pleads, that in the ſaid Vill of *J.* there are two Perſons called and known by the Names and Surnames of *A. B.* the Elder, and *A. B.* the Younger, Gentleman; and that he is, and always from the Time of his Nativity hitherto hath been named and called *A. B.* the Younger, Gentleman; and this he is ready to verify: Wherefore, inaſmuch as it doth not appear in the ſaid Writ, whether the ſaid Writ was ſued out againſt the ſaid *A. B.* the Elder, or *A. B.* the Younger, he prays Judgment of the ſaid Writ, and that it may be quaſhed; *&c.*

A Plea in Abatement by three, where they all plead diſtinct Matters; one pleads that there are 2 of the ſame Name in the ſame Pariſh, and the Plaintiff hath not diſtinguiſhed againſt which of them he hath brought his Writ. 3 Inſtr. Cl. 68.

(71.) And the ſaid *C. D.* of *M.* aforeſaid, pleads, that he, on the Day of the Suing out of the Writ aforeſaid, was commorant, and reſided at the Vill of *M.* [or rather *that he inhabited and dwelt at the Town of* M.] Without that, that he was ever commorant [or *that he ever inhabited or dwelt*] at *K.* aforeſaid, as it is ſuppoſed by the Writ aforeſaid; and he further pleads, that the Place called *K.* is in the ſaid Vill of *M.* and that it is no Vill or Hamlet of itſelf, nor Place out of a Vill or Hamlet; and this he is ready to verify: Wherefore, inaſmuch as he is not named in the ſaid Writ of any Vill, or Hamlet, or Place known to be out of any Vill or Hamlet, wherein the ſaid *C. D.* was commorant

The ſecond pleads Non-commorancy, and that the Place is in no Vill or Hamlet. Ra. Entr. 108, 195, 299.

morant or reſided [or *wherein the ſaid* C. D. *inhabited or dwelt*] at the Day of the Suing out the Writ aforeſaid, or at any Time before, according to the Form of the Statute of Additions of Names and Surnames to be put in Writs, wherein Proceſs of Outlawry lies, lately made and provided, the ſaid *C. D.* prays Judgment of the ſaid Writ, and that the ſame may be quaſhed, *&c.*

The other pleads a Miſnomer of his Surname. 3 Inſtr. Cl. 73, 74. Thompſon 1. Cl. Aſſ. 103. Pl. Gen. 71. Han. 119.

(72.) And the ſaid *E. G.* pleads, that he now is, and at the Time of the Suing out of the Original Writ aforeſaid was, and ever ſince his Nativity hath been called by the Name of *E. G.* and not by the Name of *E. T.* as it is ſuppoſed by the Writ aforeſaid; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ, and that the ſame may be quaſhed, *&c.*

A Plea of Miſnomer of the Surname with a Traverſe.

C. B.

(73.) And the ſaid *C.* by [*ſuch a one*] his Attorney, comes and defends the Force and Injury, and prays Judgment of the Bill aforeſaid, becauſe he ſaith, that he is named and called by the Name of *C. D.* and always from the Time of his Nativity hitherto hath been called and known by that Name and Surname; and this he is ready to verify: Wherefore he prays Judgment of the Bill aforeſaid, and that the ſame may be quaſhed, *&c.*

A Replication, that he is, and always was called C. T. 3 Inſtr. Cl. 75.

(74.) And the ſaid [*Plaintiff*] replies, that the Bill aforeſaid ought not to be quaſhed, notwithſtanding any Thing above alledged by the ſaid *C.* in his Plea aforeſaid, becauſe he ſaith, that the ſaid *C.* is named and called *C. T.* and hath always, from the Time of his Nativity hitherto been called and known by that Name, as is ſuppoſed by the Bill aforeſaid; and this he prays may be inquired of by the Country, and the ſaid (*Defendant*) doth likewiſe the ſame.

(75.) And

(75.) And the ſaid (*Defendant*) by *A. B.* his Attorney, comes and defends the Force and Injury, and ſaith, that in the ſaid County of *S.* there are two Vills, called *T.* that is to ſay, *North T.* and *South T.* and neither of them is without an Addition; **Without that**, that there is any ſuch Vill, Hamlet, or known Place out of a Hamlet or Vill, called or known by the Name of *T.* only, without an Addition; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

For that there are **Two Vills** called T. and neither without an Addition.

C. B.

(76.) And the ſaid *(Plaintiff)* replies, that the ſaid Writ ought not to be quaſhed by any Thing before alledged by the ſaid *(Defendant)* in his Plea, becauſe he ſaith, that there is ſuch a Vill called *T.* without an Addition, as is above ſuppoſed by the Writ aforeſaid; and this he prays may be inquired of by the Country.

A **Replication**, that there is ſuch a Vill called T. without an Addition.
3 Inſtr. Cl. 77.
Cl. Aſſ. 4.
1 Brown 2.
2 Mo. Intr. 341, 343.

To the Writ.

C. B.

(77.) And the ſaid *B.* by *H. C.* his Attorney, comes and defends the Force and Injury, and pleads, that the ſaid *A.* heretofore, to wit, in *Trinity Term* in the 12th Year of the Reign of his late Majeſty King *William* the Third, in this Court, before Sir *Henry Pollexfen*, Knt. and his Brethren the other Juſtices of this Court, at *Weſtminſter*, in the County of *Middleſex*, by his ſaid Majeſty's original Writ, iſſued out of his ſaid Majeſty's Court of Chancery (the ſaid Court being then held at *Weſtminſter* in the ſaid County of *Middleſex)* and to the then Sheriff of *N.* directed, and returnable and returned in this Court, impleaded him the ſaid *B.* in an Action of *Treſpaſs* upon the Caſe, of and for the ſeveral Matters and Cauſes of Action of and for which the ſaid *A.* hath now

Another Action depending for the ſame Thing pleaded.
2 Mo. Intr. 14.
Bro. 220.

impleaded the ſaid *B.* and now declared againſt him as above, as by the Record and Proceedings of the ſaid former Suit now remaining in this Court, to wit, at *Weſtminſter* aforeſaid, more fully appears; and the ſaid *B.* further ſaith, that *A.* named in the ſaid Record, and *A.* the now Plaintiff, named in the above Declaration, are one and the ſame, and not different Perſons; and that the ſaid *B.* named in the ſaid Record, and *B.* the now Defendant, named in the above Declaration are one and the ſame, and not different Perſons; and the ſaid *B.* further pleads, that the ſaid former Action brought and proſecuted againſt him by the ſaid *A.* for the ſame ſeveral Matters and Cauſes of Action, of and for which the ſaid *A.* hath now impleaded and declared againſt him the ſaid *B.* as aforeſaid, is as yet depending in this Court not Diſcontinued, tried, or determined; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ now ſued out and proſecuted (the ſaid former Action upon the ſaid former Writ of him the ſaid *A.* againſt him the ſaid *B.* and proſecuted of and for the ſame Matters and Cauſes of Action, as aforeſaid, being ſtill depending as aforeſaid, not diſcontinued, try'd, or determined); and that the ſaid Writ now ſued out and proſecuted may be quaſhed, *&c.*

The other Action depending.

The Original ſued out before the Treſpaſs committed. 2 Mo. Intr. 15.

(78.) And the ſaid *B.* in his own Perſon, comes and prays Oyer of the ſaid Original Writ of the ſaid *A.* and 'tis read to him in the following Words, *(George*, &c.) which being read and heard, the ſaid *B.* prays Judgment of the ſaid Writ, and pleads, that the ſaid *A.* before the Treſpaſs was committed, to wit, the ſecond Day of *May* in the ſaid Declaration abovementioned, ſued out his Original Writ of the ſaid Treſpaſs againſt him the ſaid *B.* and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ; and that it may be quaſhed, *&c.*

(79.) And

(79.) And hereupon the ſaid *Henry* ſaith, that he can't deny the ſaid Exception of the ſaid *Stephen* and *Mary*, made to the Writ aforeſaid of him the ſaid *Henry* in the Manner aforeſaid; but agrees, that the Matter aforeſaid above pleaded by the ſaid *Stephen* and *Mary*, in Diſcharge of the ſaid Writ, is really true; and prays Leave therefore, to purchaſe a better Writ; and it is granted to him, *&c.* **Therefore it is conſidered,** that the ſaid *Henry* take nothing by the Writ aforeſaid [or *take no Benefit by his ſaid Writ*] but that the ſaid Writ be quaſhed, and be the ſaid *Henry* amerced for his falſe Complaint therein; and be the ſaid *Stephen* and *Mary* from henceforth diſmiſſed the Court [or *if you'll uſe the very Words of the Entry*] and the ſaid *Stephen* and *Mary* may depart hence without a Day, *&c.*

A Confeſſion of the Plea. Clift 19.

(80.) And the ſaid *B.* by *C. D.* his Attorney, comes, and proteſting that he is in no wiſe guilty of the ſaid Treſpaſs, as the ſaid *A.* above declares againſt him, for Plea ſaith, that the ſaid *C.* one of the Defendants is dead, and died before the ſaid *A.* ſued out the ſaid Original Writ, to wit, [*ſuch a Day and Year*] at *T.* aforeſaid, in the County aforeſaid; and this he is ready to verify: And thereupon prays Judgment of the ſaid Writ; and that it may be quaſhed, *&c.*

That one of the Defendants died before the Writ purchaſed. 2 Mo. Intr. 15.

(81.) And the ſaid *B.* perſonally comes and prays Judgment of the ſaid Writ; and pleads, that before the Original Writ of the ſaid *A.* was ſued forth, to wit [*ſuch a Day*] the ſaid *A.* at *T.* in the County aforeſaid, died; and this he is ready to verify: And thereupon prays Judgment of the ſaid Writ, and that it may be quaſhed, *&c.*

That the Plaintiff died before the Writ purchaſed. 2 Mo. Intr. 15.

(82.) And the ſaid *C. D.* the Attorney of the ſaid *A.* in his Name, and for him replies, that the ſaid Original Writ of the ſaid *A.* ought not to be quaſhed, by reaſon of any Thing above alledged by the ſaid *B.* for that he ſaith, that

Replication by the Plaintiff's Attorney. 2 Mo. Intr. 15.

the ſaid *A.* at the Time of ſuing out the ſaid Original Writ, to wit [*ſuch a Day*] was, and is now alive, to wit, at *T.* aforeſaid in the County aforeſaid; and that he is not dead, as the ſaid *B.* hath in his Plea above alledged; and this he prays may be enquired of by the Country; and the ſaid *B.* does likewiſe the ſame: Therefore, &c. [*and ſo on to award the* Venire].

A Plea in Abatement to an Action brought upon a Sheriff's Bond, that the Writ was ſued out before the Day of Appearance.

(83.) And the ſaid *J.* by *H. C.* his Attorney, comes and defends the Force and Injury, and prays Oyer of the Bond aforeſaid and it is read to him, &c. he alſo craves Oyer of the Condition of the ſaid Bond, and it is read to him in theſe Words: *The Condition of this Obligation*, &c. [*here recite the Condition, and then ſay*] he alſo craves Oyer of the Original Writ of the ſaid *J.* and it is read to him in theſe Words: *George the Second by the Grace of God*, &c. [*here recite the Writ, and then ſay*] which being read and heard, (inaſmuch as it evidently and manifeſtly appears to this Court by the Condition of the ſaid Bond, and from the ſaid Original Writ, that the ſaid Writ was ſued out before the ſaid fifteen Days of St. *Martin*, on which Day he the ſaid *John* ought to have appeared before his preſent Majeſty's Juſtices of this Court of Common Pleas, according to the Form and Effect of the ſaid Condition) he the ſaid *J.* prays Judgment of the Writ aforeſaid, and that the ſame may be quaſhed, &c.

Clift 19.

Non-tenure pleaded in Dower.

2 Mo. Intr. 16.
1 Bro. 205.

(84.) And the ſaid *B.* by *G. H.* his Attorney, comes and defends his Right, &c. and pleads, that he cannot render the third Part of the ſaid Tenements, with the Appurtenances to the ſaid *M.* for her Dower; for that he now is not, nor was Tenant of the Freehold of the ſaid Tenements, at the Time that the ſaid *M.* ſued out her ſaid Original Writ, or at any Time afterwards; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ, and that it may be quaſhed, &c.

(85.) And

(85.) And the ſaid *B.* in his own Perſon [or *perſonally*] comes and defends his Right, &c. and as to fourteen Acres of arable Land, and twenty Acres of Meadow, with the Appurtenances, Parcel of the Tenements, with the Appurtenances, mentioned in the ſaid Original Writ of the ſaid *A.* the ſaid *B.* pleads, that he holds, and at the Time of Suing out the ſaid Original Writ did hold the ſame fourteen Acres of arable Land, and twenty Acres of Meadow, with the Appurtenances, in Joint-Tenancy with one *J. L.* who is ſtill alive, by the Gift and Feoffment of *D. E.* &c. to them the ſaid *B.* and *J.* by the Names of, &c. [*as in the Deed*] and to their Heirs for ever, by the Name of, &c. [*as in the Deed*] with the Appurtenances in *F.* Wherefore, and inaſmuch as the ſaid *J.* is not named in the ſaid Writ, the ſaid *B.* prays Judgment, and that the ſaid Writ, as to the ſaid fourteen Acres of arable Land, and twenty Acres of Paſture, may be quaſhed, &c. and the ſaid *B.* hath brought into Court one Part of the ſaid Writing indented, made under the Hands and Seals of the ſaid *D. E.* &c. by which the Joint-Tenancy is teſtify'd in the Manner aforeſaid, the Date whereof is [*ſuch a Day and Year*] and as to the Reſidue of the ſaid Tenements, of which the ſaid *A.* claims a third Part for her Dower, the ſaid *B.* pleads that he cannot render to her the third Part of ſuch Reſidue, becauſe he is not, nor was he Tenant of the Freehold thereof, at the Time of ſuing out of the ſaid Original Writ; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Writ, as to the third Part of the Reſidue of the ſaid Tenements, and that the ſaid Writ may be quaſhed, &c.

Jointenancy to part, Montenure to the Reſidue, to an Action of Dower. 2 Mo. Intr. 16. 3 Inſtr. Cl. 98.

(86.) And the ſaid *B.* in his own Perſon, [or *perſonally*] comes and prays Judgment of the ſaid Writ, and pleads, that he, together with one *C. D.* of *E.* &c. [*ſuch a Day and Year aboveſaid*] became bound to the ſaid *A.* by the ſaid Writing

Where two are bound jointly, and one only named in the Writ.

2 Mo. Intr. 17. Writing Obligatory, in the ſaid Sum of 150 *l.* to be paid, when they ſhould be afterwards thereunto required, as by the ſame Writing brought into this Court fully appears; and the ſaid *B.* further ſaith, that he did not bind himſelf to the ſaid *A.* without the ſaid *C.* but that they bound themſelves jointly, and not ſeverally by the ſaid Writing Obligatory: Wherefore, and inaſmuch as the ſaid *C.* is not named in the ſaid Writ, the ſaid *B.* prays Judgment thereof, and that the ſaid Writ may be quaſhed, *&c.*

That the Property of the Goods was in a Stranger. 2 Mo. Intr. 17.

(87.) And the ſaid *B.* by *J. M.* his Attorney, comes and prays Judgment of the ſaid Declaration, and pleads, that the Property of the ſaid Goods and Chattels at the Time of taking them, was in *T.* Father of the ſaid *A.* Without that, that the Property of the ſaid Goods and Chattels was, at the Time of taking them, in the ſaid *A.* as he hath above ſuggeſted in his ſaid Declaration; and this he is ready to verify: Wherefore he prays Judgment of the ſaid Declaration, and that it may be quaſhed, *&c.*

B. R. or C. B.

Where there are Two Executors, and 1 only named in the Writ. 2 Mo. Intr. 17.

(88.) And the ſaid *B.* by *C. T.* his Attorney, comes and prays Judgment of the Writ, and pleads, that the ſaid *A.* [*the ſaid Teſtator*] by his laſt Will conſtituted and appointed one *C. D.* Executor of his ſaid Teſtament, together with the ſaid *B.* and afterwards died, which ſaid *C.* adminiſtered the Goods and Chattels of the ſaid *A.* [*the Teſtator*] together with the ſaid *B.* Wherefore, and inaſmuch as the ſaid *C. D.* is not named in the ſaid Writ, the ſaid *B.* prays Judgment thereof, and that the ſaid Writ may be quaſhed, *&c.*

E. B.

(89.) ——— And prays Judgment of the ſaid Bill, and pleads, that after the Death of the ſaid *C. D.* that is to ſay [*ſuch a Day and Year*] Adminiſtration of all and ſingular the Goods and Chattels of the ſaid *C. D.* at the Time of his Death to be adminiſtered, was granted to him the ſaid *B.* and one *E. F.* which ſaid *E.* is ſtill alive at *J.* aforeſaid in the County aforeſaid; and this he is ready to verify: Wherefore, and inaſmuch as the ſaid *E.* is not named in the ſaid Bill, the ſaid *B.* prays Judgment, and that the ſaid Bill may be quaſhed, *&c.*

Where there are **Two Adminiſtrators**, and one only named.

(90.) And the ſaid *B.* in his own Perſon [or *perſonally*] comes and prays Judgment of the Bill aforeſaid, and pleads, that it appears by the ſaid Bill, that he is chargeable by Virtue of a Promiſe and Undertaking in the Bill mentioned, in an Action of Account as Bailiff of the ſaid *A.* and this he is ready to verify: Wherefore, and inaſmuch as the Bill aforeſaid is in an Action of Treſpaſs upon the Caſe, the ſaid *B.* prays Judgment of the ſaid Bill, and that it may be quaſhed, *&c.*

For that the Action is brought in Caſe, and ought to be in Account. 2 Mo. Intr. 18.

Eſtoppels in Abatement.

E. K.

(91.) And the ſaid *Henry* replies, that the ſaid *Thomas* ought not to be admitted to his ſaid Plea of Tender, in the Manner and Form as the ſame is above pleaded, becauſe he ſaith, that the ſaid *Henry*, lately, that is to ſay, in *Eaſter-Term* laſt paſt, declared in this Court, in the ſaid Action, in the Manner and Form aforeſaid; and the ſaid *Thomas*, by the ſaid *Walter Salter*, then his Attorney, came and defended the Force and Injury, when, *&c.* and then pray'd Leave to imparl thereto until this Day (*that is to ſay*) on the Morrow of

An **Eſtoppel** to a Plea of Tender, by reaſon of an Imparlance.

of the *Holy Trinity*, and he had it, &c. the ſame Day was given to the ſaid *Henry* here, &c. as by the Record thereof now remaining in this ſame Court may appear; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *Thomas* ought to be admitted to his ſaid Plea of Tender in the Manner and Form, as the ſame is above pleaded, &c.

Clift 19, 203. Note; *This Plea is to be pleaded thus, by ſaying, that the Defendant imparled to this Day*, &c. *when the Replication came in the next Term after the Plea; whereas, if the Replication came of another Term, after That, to which the Action is continued by Imparlance, the Words* this Day *muſt be omitted.*

An Eſtoppel by an Imparlance of another Term.

(92.) And the ſaid *William Eldridge* replies, that the ſaid *W. B.* ought not to be admitted to have his Plea aforeſaid, by him above pleaded to quaſh the Bill aforeſaid, becauſe he ſaith, that he the ſaid *William Eldridge*, in *Eaſter Term* laſt paſt, brought here into this Court of our ſaid Sovereign Lord the King, before the King himſelf, his Bill againſt the ſaid *William Battin*; and that the ſaid *William Battin*, in the ſame *Eaſter Term*, came into this Court of our ſaid Sovereign Lord the King, before the King himſelf, by the ſaid *William Walker* his Attorney, and defended the Force and Injury, when, &c. and pray'd Leave to imparl thereto, and it was granted to him, &c. and thereupon a Day was given, as well to the ſaid *William Eldridge*, as to the ſaid *William Battin*, before our ſaid Sovereign Lord the King till this Day (to wit) till *Friday* next after the Morrow of the *Holy Trinity* (that is to ſay) to the ſaid *William Battin* to imparl, &c. and then to anſwer, as by the Record thereof now remaining in this ſame Court before our ſaid Sovereign Lord the King at *Weſtminſter* may more fully appear; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *William Battin*, after ſuch Imparlance by him had

had as aforeſaid, ought to be admitted to his Plea aforeſaid, to quaſh the Bill aforeſaid, &c. Clift 18.

(93.) And the ſaid *R. Roles*, as to the Plea aforeſaid, of the ſaid *Benjamin*, as to the ſaid ſeven Pounds ten Shillings above pleaded in Bar, replies, that the ſaid *Benjamin* ought not to be admitted to that anſwer, becauſe proteſting, that the ſaid *Benjamin* did not offer to pay the ſaid *Robert* the ſaid ſeven Pounds ten Shillings in ſuch Manner and Form as the ſaid *Benjamin* hath above alledged, he the ſaid *Robert* for Plea ſaith, that he, lately (that is to ſay) in *Eaſter Term* laſt paſt, declared in this ſame Court of our ſaid Soverign Lord the King, againſt the ſaid *Benjamin*, in this ſame Action, in the Manner and Form as he the ſaid *Robert* doth above declare againſt him; and that the ſaid *Benjamin*, by the ſaid *J. D.* his Attorney came and defended the Force and Injury, when, &c. and ſaving to himſelf all and all Manner of Exceptions, as well to the Writ, as to the Declaration aforeſaid, prayed Leave to imparl thereto until this Day, that is to ſay, on the Morrow of the *Holy Trinity*, and had it. The ſame Day was given to the ſaid *Robert* here, &c. as by the Record thereof now remaining in this ſame Court may appear; and this he is ready to verify: And therefore prays Judgment, whether the ſaid *Benjamin* ought to be admitted to have the Plea aforeſaid, and his Damages, by reaſon of the Premiſſes, to be adjudged to him, &c. Clift 17.

Agar.

An **Eſtoppel** to a Plea of Tender, by a **Special Imparlance.**

(94.) And the ſaid *Alexander* pleads, [or rather *rejoins*] that the Plea aforeſaid, above pleaded by the ſaid *John Turner*, by way of Replication [or rather *that the Replication aforeſaid*] in the Manner and Form aforeſaid, and the Matter therein contained, are not ſufficient in Law to oblige the ſaid *Alexander* to anſwer to the Bill of the ſaid *John Turner*, and that he is not

A **Demurrer** to a **Replication** to a Plea in Abatement, where the Defendant had pleaded, that the Plaintiff was outlawed at the Suit of a Stranger, and the Plaintiff replied, that he is not the ſame Perſon againſt whom the Outlawry was had.

under

under a Neceſſity, nor by the Law of the Land obliged to anſwer the ſaid Replication in any other Manner; and this he is ready to verify: And therefore, for want of a ſufficient Replication of the ſaid *John Turner*, in this Particular, [*as before*] he prays Judgment, whether the ſaid *Alexander* ought to be obliged to anſwer to the ſaid Bill of the ſaid *John Turner*, &c.

A Joinder in Demurrer.

(95.) And the ſaid *John Turner* pleads [or rather *ſurrejoins*] that the Plea aforeſaid above pleaded by the ſaid *John Turner*, by Way of Replication, in the Manner and Form aforeſaid, and the Matter therein contained, is good and ſufficient in Law to oblige the ſaid *Alexander* to anſwer the ſaid Bill of the ſaid *John Turner*, which ſaid Plea, and the Matter therein contained, he the ſaid *John Turner* is ready to verify and prove, as the Court ſhall direct; and becauſe the ſaid *Alexander* doth not anſwer to the ſaid Replication, nor in any Manner deny the ſame, he the ſaid *John Turner* prays Judgment, and that the ſaid *Alexander* may anſwer to the Replication of the ſaid *John Turner*: And becauſe the Court of our ſaid Sovereign Lord the King now here, are not yet adviſed to give their Judgment of and concerning the Premiſſes, a Day is therefore given to the ſaid Parties before our Sovereign Lord the King at *Weſtminſter*, till [*ſuch a Day*] to hear their Judgment of and concerning the Premiſſes, for that the ſaid Court of our ſaid Sovereign Lord the King are not now here yet determined, &c.

Clift 22.

See more hereafter, under Title **Demurrers.**

A Judgment, that the Plaintiff ſhould take nothing by his Writ, the Plaintiff owning the Plea to be true.

(96.) And the ſaid *B.* comes and defends, &c. and prays Oyer of the ſaid Bond, and it is read to him, &c. he alſo craves Oyer of the Condition of the ſaid Bond, and it is read to him in theſe Words: *The Condition of this*, &c. [*here recite the Condition*] he alſo craves Oyer of the Original Writ of the ſaid *A.* and it is read to him

in these Words: *George the Second by the Grace of God, &c.* [*so recite the Original*] which being read and heard, he the said *B.* prays Judgment of the Writ aforesaid, because he saith, that the said *A.* before the said Feast of St. *Michael*, mentioned in the said Condition above specified, sued out his Original Writ for his Debt aforesaid against him; and this he is ready to verify: And therefore prays Judgment of the said Writ, and that the same may be quashed. And because the said *A.* doth not deny the said Exception, which appears to this Court upon inspecting the Writ and Declaration aforesaid, to be sufficient: **Therefore it is considered**, that the said *A.* take nothing by his Writ aforesaid, but that he be amerced for his false Complaint therein; and that the said *B.* do therefore depart without a Day, *&c.* it is also considered, that the said *B.* do recover against the said *A.* Thirty-three Shillings and Four-pence for his Expences and Costs, sustained by him about his Defence in this Cause here adjudged to the said *B.* by the Discretion of his Majesty's Justices of this Court, according to the Form of the Statute in such Case made and provided, *&c.*

A Plea, that the Plaintiff brought his Original before the Day in the Condition for the Payment of the Money.

The Plaintiff allows of the Plea.

Judgment, that the Plaintiff take nothing by his Writ.

Costs awarded.

Bro. Red. 259.

(97.) And the said *A.* not denying the said Exception, for the Reason aforesaid, and others in the said Writ contained, prays Leave to complain by a better Writ, and he hath it, *&c.* **Therefore it is considered**, [or *adjudged*] that the said *A.* takes nothing by his said Writ, but that he be amerced for his false Complaint, *&c.*

A Confession of the Plea to be true, and an Award of a Writ by Journeys Accounts.

(98.) And because the Justices of this Court will consider of the Premisses before they give Judgment thereon, a Day is given to the Parties by the Court, until *Wednesday* next after the Morrow of the *Holy Trinity*, to hear their Judgment, because the said Justices have not as yet considered thereof, *&c.* At which Day came into Court, as well the said *G.* as the said *E.* in their own Persons: And thereupon, the Premisses being considered, and fully understood by the said Justices, who

A Judgment for the Plaintiff, an Attorney of C. B. upon a Plea of Privilege by the Marshal of B. R.

2 Bro. 60.

who are of Opinion that the ſaid Plea is not ſufficient in Law to exclude them from having Cognizance of the ſaid Action, or to exclude the ſaid *G.* from his ſaid Privilege: It is conſidered, [or *adjudged*] that the ſaid *E.* ought to enjoy his ſaid Privilege of this Court; and that the ſaid *G.* do further anſwer the ſaid Declaration of the ſaid *E.* and thereupon the ſaid *G.* comes and defends the Force and Injury, when, *&c.* and prays Leave to imparl till *Monday* next after the * Octaves of St. *Michael*, and he hath Leave, *&c.* The ſame Day is given to the ſaid *E.* by this Court, *&c.* before which Day the ſaid Plaint was adjourned by his Majeſty's Writ of Common Adjournment untill this Day, to wit, from the Day of St. *Michael* in one Month then next following; and now at this Day comes into this Court, as well the ſaid *E.* as the ſaid *G.* in their own Perſons: And thereupon the ſaid *E.* as before, prays that the ſaid *G.* may further Anſwer his ſaid Declaration, *&c.*

A Reſpondeas Ouſter.

Imparlance.

The Continuance adjourned by a Writ of Adjournment.

* Note; *This was before* Michaelmas Term *was ſhortened.*

See more hereafter of **Judgments** in **Abatement**, under Title **Judgments.**

Account.

B. R.

A Plea, that as to Part of the Time he never was **Bailiff or Receiver**, and as to the reſt, that he fully accounted.

(1.) AND the ſaid *C.* comes and defends the Force and Injury, when, *&c.* And as to two Years of the Time mentioned in the ſaid Declaration, wherein it is ſuppoſed the ſaid *C.* to have been Bailiff and Receiver of the Monies of the ſaid *G.* and of the Manor, Meſſuages, Lands, Meadows, Paſtures, Woods, Furz and Heath, and to have had the Care and Management of the Cattle, Grain, Hay, Straw, Timber, Wood, *&c.*

of the ſaid *G.* within the Manor, Lands, and Tenements aforeſaid, and of the Monies, Rents, and other Profits, Commodities, Advantages ariſing and accruing from the ſaid Manors, Lands, and Tenements within the ſaid two laſt Years, he the ſaid *W.* pleads, that he never was Receiver of the Monies of the ſaid *A.* of the Premiſſes in the Declaration above laid to his Charge, as the aforeſaid *A.* hath above declared againſt him, and thereof he puts himſelf upon the Country, and the ſaid *A.* doth likewiſe the ſame: And as to the Reſidue of the Time above-mentioned in the ſaid Declaration, during which Time the ſaid *C.* doth acknowledge himſelf to have been Bailiff and Receiver of the Monies of the ſaid *A.* of the Premiſſes in the Declaration aforeſaid, above laid to his Charge; he the ſaid *C.* pleads, that the ſaid *A.* ought not to have his Action thereupon againſt him, becauſe he avers, that he the ſaid *C.* after the ſaid Time was ended, that is to ſay, on the 22d Day of *October*, in the 7th Year of the Reign of his preſent Majeſty, fully accounted with the ſaid *A.* &c.

Cl. Aſſ. 123. Ro. Entr. 123. 1 Saund 105. Ra. Entr. 20.

(2.) And the ſaid *C.* by *T. W.* his Attorney, comes and defends the Force and Injury, when, &c. and pleads, that he never was Receiver of the Monies of the ſaid *A.* to render an Account thereof to the ſaid *A.* in ſuch Manner and Form as the ſaid *A.* declares againſt him; and of this he puts himſelf upon the Country, &c.

125. Ra.

A Plea, that he never was Receiver. Cl. Aſſ. 79. Han. 165. Pl. Gen. 212. Ro. Ent. 120. Vet. Intr. 21. Entr. 19. 22.

(3.) *A* Plea, *that he never was* Bailiff, *differs from the former in no other Reſpect, than* (mutatis mutandis) *viz.* That he never was Bailiff of the ſaid *(Plaintiff)* of the Goods and Chattels aforeſaid, to render an Account thereof to the *(Plaintiff)* in the Manner and Form aforeſaid; and of this, &c.

Co. Entr. 46. 4. 3

A Plea, that he never was Bailiff, &c. 2 Brown 38. Cl. Aſſ. 83. Pl. Gen. 212. Ro. Entr. 4. 1 Brown 114. Brownl. 6. 7.

A Plea, that there is no ſuch Account. Pl. Gen. 212.

(4.) ——— when, &c. and pleads, that he ought not to be charged with the Debt aforeſaid, by Virtue of the Account aforeſaid, becauſe he ſaith, that there is not any ſuch Account made between him the ſaid *(Defendant)* and the ſaid *(Plaintiff)* as the ſaid *(Plaintiff)* hath above alledged.

A Diſcharge of the Auditors in Account. Pl. Gen. 213. Han. 194.

(5.) ——— when, &c. and pleads, that the ſaid *(Plaintiff)* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that after the Time aforeſaid, when the ſaid *(Plaintiff)* aſſigned the ſaid *J. B.* and *T. M.* to audit the Account of the ſaid *(Defendant)* and before any Account made before the ſaid *J.* and *T.* for the Receipt of the Monies aforeſaid at *C.* in the County aforeſaid, he the ſaid *(Plaintiff)* diſcharged the ſaid *J.* and *T.* from auditting the Account; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *(Plaintiff)* ought to have or maintain his ſaid Action againſt the ſaid *(Defendant)* for the ſame, &c.

A Replication.

(6.) And the ſaid *(Plaintiff)* ſaith, that he ought not to be precluded from having his ſaid Action to be maintained againſt the ſaid *(Defendant* by any Thing above alledged by the ſaid *(Defendant)* in his Plea, becauſe he replies, that he did not diſcharge the ſaid *J.* and *T.* from auditting the Account aforeſaid, as the ſaid *(Defendant)* hath above alledged; and this he prays may be inquired of by the Country, &c.

A Plea, that the Defendant accounted before the Auditors. Vid. 78. Pl. Gen. 213.

(7.) And the ſaid *(Defendant)* by *J. S.* his Attorney, comes and defends the Force and Injury, when, &c. and pleads, that the ſaid *(Plaintiff)* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that after the Time aforeſaid, when the ſaid *(Defendant)* is ſuppoſed to have been Receiver of the Monies of the ſaid *(Plaintiff)* to wit, on the 1ſt Day of *June* then next enſuing at *H.* in the County aforeſaid, he the ſaid

ſaid *(Defendant)* accounted with the ſaid *(Plaintiff)* for the Time and Monies aforeſaid [*if it be before Auditors, then thus*] that the ſaid Defendant fully accounted before *S. M.* and *R. S.* Auditors aſſigned by the ſaid *(Plaintiff)* to audit the Account aforeſaid; and this he is ready to verify: Wherefore he prays Judgment, whether he the ſaid *(Plaintiff)* ought to have or maintain his ſaid Action againſt him, *&c.*

(8.) And the ſaid *(Plaintiff)* replies, that he, notwithſtanding any thing above alledged by the ſaid *(Defendant)* in his Plea, ought not to be precluded from having his ſaid Action to be maintained againſt the ſaid *(Defendant)*, becauſe the ſaid *(Plaintiff)* ſaith, that the ſaid *(Defendant)* did not account with the ſaid *(Plaintiff)* for the Time and Monies aforeſaid [or *if the Plea be of an Account before Auditors, then thus*] that he the ſaid *(Defendant)* did not account with the Auditors for the Monies aforeſaid, in ſuch Manner and Form as he the ſaid *(Defendant)* hath in his Plea above alledged; and this the ſaid *(Plaintiff)* prays may be inquired of by the Country. **Replication.**

(9.) ——— when, *&c.* and admits, that he, can't deny but that he was Receiver of the Monies of the ſaid *(Plaintiff)* as he the ſaid *(Plaintiff)* hath above declared againſt him, but pleads, that he, on [*ſuch a Day and Year*] in the Preſence of *W. P.* rendered a full Account thereof to the ſaid *(Plaintiff)*; and this he is ready to verify, *&c.* [*then conclude as in another Plea*]. **A Plea of an Account by way of Confeſſion and Avoidance.** Han. 105. Pl. Gen. 213.

(10.) And the ſaid *(Plaintiff)* replies, that he, notwithſtanding any Thing above alledged by the ſaid *(Defendant)* in his Plea, ought not to be precluded from having his ſaid Action to be maintained againſt the ſaid *(Defendant)* becauſe he ſaith, that the ſaid *(Defendant)* did not render a full Account, as he the ſaid *(Defendant)* hath above alledged in his Plea; and this he prays may be inquired of by the Country, *&c.* **Replication.**

A Plea after the Account, that he paid the Monies. Pl. Gen. 214.

(11.) ——— when, &c. and pleads, that the ſaid *(Plaintiff)* ought not to have or maintin his ſaid Action againſt him, becauſe he ſaith, that after the Time when the Receipt of the ſaid Monies is ſuppoſed to have been, to wit, [*ſuch a Day and Year*] at *C.* aforeſaid, he the ſaid *(Defendant)* paid and delivered to the ſaid *(Plaintiff)* the ſaid 40 *l.* and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *(Plaintiff)* ought to have or maintain his ſaid Action againſt him, &c.

See after Title Judgments.

Adjournment.

The Entry of a Writ of Adjournment. Theſ. Bre. 3. Vide Off. Bre. 7.

(1.) AND now at this Day, to wit, on *Monday next after three Weeks of St.* Michael, until which Day the ſaid *(Defendant)* had Time to imparl to the Debt, and then to anſwer, &c. to which Day the ſaid Plaint was adjourned by his ſaid Majeſty's Writ of Adjournment, before his ſaid Majeſty at *Weſtminſter*, until *one Month from the Day of St.* Michael; at which Day the ſaid Plaint was further adjourned by his ſaid Majeſty's Writ of Adjournment, before his ſaid Majeſty at *Weſtminſter* in the County of *Middleſex*, to the Town of *Reading* in the County of *Berks*, until on *the Morrow of* All-Souls; at which Day came before our ſaid Sovereign Lord the King, at the Town of *Reading* aforeſaid, as well, &c.

The

The Form of an Adjournment *of the Court of* King's Bench, *from the City of* Weſtminſter, *to the City of* Oxford, *and from thence to* Windſor *in the County, after the* Venire Facias *was awarded.*

1 Saund. 12, 179.

(2.) BEFORE which * Day the ſaid Plaint was adjourned by a Writ of our ſaid Sovereign Lord the King of Common Adjournment, before our ſaid Lord the King at † *Oxford* in the County of *Oxford*, till *Saturday* in the *Octaves* of St. *Martin*; at which Day the ſaid Parties came before our Sovereign Lord the King, by their ſaid Attornies; and becauſe the Court of our ſaid Sovereign Lord the King here are not yet adviſed [or *are not yet determined*] to give their Judgment of and concerning the Premiſſes, a further Day is therefore given to the ſaid Parties before our ſaid Sovereign Lord the King at *Oxford*, till *Saturday* on the Morrow of the Purification of the Bleſſed Virgin *Mary*, to hear their Judgment of and upon the Premiſſes; for that the Court of our ſaid Sovereign Lord the King now here are not yet adviſed, &c. Before which Day the ſaid Plaint was adjourned by a Writ of our ſaid Sovereign Lord the King, of Common Adjournment, before our ſaid Sovereign Lord the King, till the ſaid Morrow of the Purification of the Bleſſed Virgin *Mary*, at the Caſtle of *Windſor* [or *at Windſor Caſtle*] in the County of *Berks*; at which Day the ſaid Parties came before our ſaid Sovereign Lord the King at the Caſtle of *Windſor*, [or *at Windſor Caſtle aforeſaid*] by their ſaid Attornies; and becauſe the Court of our ſaid Sovereign Lord the King now here are not adviſed to give their Judgment of and upon the Premiſſes, a further Day is therefore given to the ſaid Parties, before our ſaid Sovereign Lord the King at the Caſtle of *Windſor* aforeſaid, till *Friday* in the

* That is the Day in Bank, to which the Cauſe was continued by a Nonoum adviſatur.

† The Adjournment to Oxford.

The Adjournment from Oxford to Windſor Caſtle.

the *Octaves* of the Purification of the Bleſſed Virgin *Mary*, for hearing their Judgment of and upon the Premiſſes; for that the Court of our ſaid Lord the King here are not yet adviſed thereof. Before which Day the ſaid Plaint was adjourned by a Writ of our ſaid Lord the King of Common Adjournment, before the ſaid Lord the King, till the aforeſaid *Octaves* of the Purification of the Bleſſed Virgin *Mary* at *Weſtminſter* in the County of *Middleſex*; at which Day, &c. [*ſo go on with the reſt of the Continuances*, &c.]

An Adjournment of the Plaint from Windſor to Weſtminſter.

Vid. 2 Brown Wi. Entr. 505. 1 Brown 166. 1 Brown 205, 254. Cl. Aſſ. 69, 79.

Admiſſion of Infants. Vide Infants.

Admittance.

(1.) THAT he the ſaid *J. C.* afterwards, and before the Time that the above-mentioned Demiſe was made (to wit) [*ſuch a Day and Year*] dyed at *B.* aforeſaid, without Iſſue of his Body lawfully begotten, and that the ſaid *R.* then and there likewiſe died; and that afterwards, to wit [*ſuch a Day and Year*] the ſaid *J. L.* came into the Court of the Manor aforeſaid, held at *B.* aforeſaid, the ſame Day and Year laſt above mentioned; and ſhewed, that neither the Sum of 106 *l.* or any Part thereof, was paid at the Day and Place abovementioned, for the Payment thereof, according to the Tenor and Effect of the ſaid Surrender *laſt abovementioned*, and prayed the Favour of the Lord of the Manor aforeſaid, to be admitted Tenant of the Premiſſes aforeſaid: And thereupon the ſaid *J. L.* at the ſame Court of the Manor aforeſaid, was admitted Tenant of the ſaid Meſſuage [*mentioning the Lands*] with the Appurtenances, according to the Cuſtom of the Manor aforeſaid; and thoſe Tenements, with the Appurtenances, were then and there in the ſame Court granted by the ſaid Lord of the Manor aforeſaid, to

The manner of ſetting forth a Surrender and an Admittance to a Copyhold Eſtate.

1 Saund. 146. See 1 Lut. 760, 761, 762.

to the ſaid *J. L.* to hold to the ſaid *J. L.* his Heirs and Aſſigns, according to the Form and Effect of the Surrender and Admittance laſt above mentioned, at the Will of the Lord, according to the Cuſtom of the Manor aforeſaid, as by a Copy of the Court-Rolls of that Manor, made for that Purpoſe now ſhewn to this Court, more fully may appear.

Vide poſtea Title **Surrender.**

A Writ de Admittend' Clericum.

(1.) *GEORGE, &c.* To the Reverend Father in God *J.* Lord Biſhop of *H.* Greeting: Whereas *A. B.* Gentleman, lately in our Court, before Sir *E. P.* Knight, one of our Juſtices aſſigned to hold Pleas in our Court before us, our Juſtice appointed to hold the Aſſizes in our County of *H.* by our Writ of *Quare Impedit*, and by the Judgment of the ſame Juſtice at the ſaid Aſſizes, recovered againſt the ſaid *C. D.* Clerk, his Preſentation to the Vicarage of the Church of *L.* in our ſaid County of *H.* and in your Dioceſe, which was vacant, and in his Gift; and it was adjudged by the ſaid Juſtice, that the ſaid *A. B.* might have our Writ to be directed to you the ſaid Biſhop, Ordinary of the ſaid Place, that notwithſtanding your Diſclaimer, or the Diſclaimer of the ſaid *C. D.* although the ſaid *C. D.* be inſtituted and inducted, you ſhould remove him the ſaid *C. D.* from the Vicarage of the ſaid Church, and that you ſhould admit a fit Parſon to the Vicarage of the ſaid Church, upon the Preſentation of the ſaid *A. B.* whereof the ſaid *C. D.* is convicted, as by inſpecting the Record and Proceedings thereof, (which we cauſed to be brought into our Court before us, for certain Cauſes of Error,) it appears to us of Record: And foraſmuch as, in our ſame Court before us, at *Weſtminſter*, it was

A Writ to the Biſhop to remove the preſent Clerk, and admit the Clerk of the Plaintiff in a Quare Impedit, after Judgment had at the Aſſizes, and a Writ of Error in the King's Bench. Lilly's Entr. 531. Off. Brev. 9. Hanſ. 238. Booth's Real Actions 231. Theſ. Brev. 1.

was conſidered, that the ſaid *A. B.* might have his Execution againſt the ſaid *C. D.* according to the Form and Effect of the ſaid Recovery, by the Default of the ſaid *C. D.* as it likewiſe appears to us of Record: Therefore we command you, that notwithſtanding your Diſclaimer, or the Diſclaimer of the ſaid *C. D.* although the ſaid *C. D.* be admitted, inſtituted, and inducted into the Vicarage of the ſaid Church, you remove him the ſaid *C. D.* from the Vicarage of the ſaid Church; and that you admit a fit Parſon to the Vicarage of the ſaid Church, upon the Preſentation of the ſaid *A.* and that in what Manner you ſhall execute this our Writ, you make appear to us, from the Day of [*the Return*] whereſoever, &c. and have you there this Writ. Witneſs, &c.

A Writ after Judgment affirmed, to Admit a Clerk, and to inquire if the Prebend be vacant, or not, and the yearly Value of it. Lilly's Entr. 531.

(2.) *George*, &c. To the Reverend Father in God *G.* Lord Biſhop of *W.* Greeting: Know ye, that we, in our Court before us, by the Judgment of the ſame Court, have recovered the Preſentation againſt you and *N. C.* to the Prebend and Canonry of *T.* in the Collegiate Church of vacant, and in our Gift; whereof we brought our Writ of *Quare Impedit* in our ſame Court, againſt you, and the ſaid *N. C.* as by inſpecting the Record and Proceedings thereof, which we cauſed to be brought before us, for certain Cauſes of Error, it appears to us of Record: And whereupon it was adjudged in our Court before us, that we may have an Execution thereof againſt you and the ſaid *N. C.* but becauſe it is not known, whether the ſaid Canonry and Prebend are full, or not, nor how much the ſame are worth by the Year, according to the true Value of them: We command you, that upon the Oaths of twelve good and lawful Men, you diligently inquire, whether the ſaid Canonry and Prebend are full or not, and how much they are worth by the Year, according to the true Value of them; and that you make appear to us [*on ſuch a Return*] the Inquiſition which you ſhall take thereon, whereſoever, &c. And therefore we command you, notwithſtanding your

Defence, and that of the ſaid *N. C.* that upon our Preſentation you admit a fit Perſon to the ſaid Prebend. Witneſs, *&c.*

Antient Demeſne.

(1.) ——— That the ſaid Meſſuage Lands and Tenements above ſpecified in the ſaid Declaration, are held of the Manor of *W.* in the County aforeſaid; which Manor is, and Time immemorial hath been of Antient Demeſne of our Sovereign Lord the King, and his Predeceſſors Kings of *England*; and that the ſaid Tenements, during all the Time aforeſaid, have been pleaded and pleadable in the Court of the ſame Manor or Hundred aforeſaid, by a ſmall Writ of Right Cloſe of our ſaid Sovereign Lord the King, before the Steward, Suitors, and Domeſmen of the ſame Manor and Hundred, or their Deputies and Attornies, and not elſewhere, or in any other Manor howſoever, *&c.*

The manner of pleading Lands held in antient Demeſne. Ro. Entr. 301, 303. Tho. 302. 3 Lev. 417. Theſ. Brev. 243. 1 Lut. 773.

Vide **Abatement** and **Scire Facias.**

Appeal of Mayhem.

(1.) *G. B.* late of, *&c.* and *J. B.* of, *&c.* were attached by their Bodies, to anſwer to *T. B.* together with *E. B.* late of, *&c.* for a Mayhem of the ſaid *T. B.* and for a Breach of the Peace of his preſent Majeſty, whereof he appealed them, and there are Pledges of Proſecuting, to wit, *John Doe* and *Richard Roe*; and thereupon the ſaid *T. B.* in his own Perſon, inſtantly appeals the ſaid *G. B.* and *J. B.* for that whereas the ſaid *T. B.* was in the Peace of God, and of our ſaid Sovereign

An Original Writ in an Appeal of Mayhem. Hanſ. 277. Tho. 188.

Sovereign Lord the King that now is, at *S.* aforeſaid in the County aforeſaid, on the 22d Day of *September*, in the 6th Year of the Reign of his ſaid preſent Majeſty, about the Hour of Six in the Morning of the ſame Day, at which Time, as well the ſaid *G. B.* and *J. B.* who now appear, as the ſaid *E. B.* who doth not now appear, (whom the ſaid *T. B.* would likewiſe appeal, was he preſent) felonioufly came there, and as Felons of our ſaid Sovereign Lord the King that now is, by lying in Wait and premeditating an Aſſault againſt the Peace of our ſaid Sovereign Lord the King, his Crown, and Dignity, at the Day, Year, Hour, Place, and County of *S.* aforeſaid; and the ſaid *G. B.* with a Staff of the Value of Two-Pence, which he the ſaid *G. B.* then and there had and held in his Hands, did then and there feloniouſly ſtrike the ſaid *T. B.* upon the Back of his Left Hand, and then and there gave the ſaid *T. B.* a Stroke, with which ſaid Stroke the ſaid *G. B.* then and there feloniouſly broke and bruiſed the Joints, Veins, and Nerves of the 4th Finger of the ſaid *T. B.*'s Left Hand, by means whereof the ſaid Joints, Veins, and Nerves became totally contracted, withered, and mortified, and ſo the ſaid *T. B.* loſt the whole Strength, Power, and Uſe of his ſaid Finger; and that as well the ſaid *J. B.* who now appears, as the ſaid *E. B.* who doth not appear, were then and there feloniouſly preſent abetting, procuring, aiding, and aſſiſting the ſaid *G. B.* to commit the ſaid Felony and Mayhem, in the Manner aforeſaid: And thus the ſaid *G. B. J. B.* and *E. B.* at the Day, Hour, Place, and County of *S.* aforeſaid, feloniouſly maimed the ſaid *T. B.* againſt the Peace of our ſaid Sovereign Lord the King, his Crown, and Dignity; and as ſoon as the ſaid *G. B. J. B.* and *E. B.* had committed the ſaid Felony and Mayhem, in the Manner aforeſaid, they fled, and the ſaid *T. B.* recently purſued them from Town to Town, to the four neareſt Towns and further, until, &c. And if the ſaid *G. B.* and *J. B.* who now appear, will deny the Mayhem charged upon them, in the

Manner

Manner aforeſaid, he is ready to prove the ſame againſt them, as this Court, &c.

A Count in an Appeal of Murder. Hanſ. 259, 270, 271, 272, 273, 267.

(2.) *John Askue*, Brother and Heir of *Simon Askue*, by *R. H.* his Attorney, according to the Form of the Statute, &c. inſtantly appeals *H. B.* late of *London*, otherwiſe called *H. B.* of, &c. in the Cuſtody of the Marſhal, &c. for that whereas the ſaid *Simon* was in the Peace of God, and of our Sovereign Lord the King that now is, at *Eaſt-Smithfield* in the County of *Middleſex*, upon the 11th Day of *March*, in the 6th Year of the Reign of his ſaid preſent Majeſty, about the Hour of One in the Afternoon of the ſame Day, came the ſaid *H. B.* felonioufly, and as a Felon of our ſaid Sovereign Lord the King that now is, by lying in Wait and premeditating an Aſſault againſt the Peace of our ſaid Sovereign Lord the King, his Crown, and Dignity, at the Day, Year, Hour, Place, and County of *Middleſex* aforeſaid; and the ſaid *H. B.* with a Sword of the Value of Two Shillings, which the ſaid *H. B.* then and there held in his Right Hand, then and there felonioufly ſtruck the ſaid *S. A.* upon his Left Knee, then and there giving the ſaid *S. A.* a mortal Wound, of which ſaid mortal Wound the ſaid *S. A.* languiſhed from the ſaid 20th of *March*, in the 6th Year aboveſaid, at *Eaſt-Smithfield* aforeſaid, in the County of *Middleſex* aforeſaid, until the 7th Day of *April* then next following, upon which ſaid 7th of *April*, in the ſaid 6th Year aboveſaid, at *Eaſt-Smithfield* in the ſaid County of *Middleſex*, the ſaid *S. A.* died of the ſaid Wound; and ſo the ſaid *H. B.* felonioufly killed and murdered the ſaid *S. A.* in the Manner and Form aforeſaid, againſt the Peace of our ſaid Sovereign Lord the King, his Crown, and Dignity; and as ſoon as the ſaid Felon had committed the ſaid Felony and Murder in the Manner aforeſaid, he fled, and the ſaid *J. A.* recently purſued him from Town to Town, unto the four next Towns and further, until, &c. And if the ſaid Felon will deny the ſaid Felony and Murder charged upon him

in

in the Manner aforeſaid, the ſaid *J. A.* is ready to prove it, as the Court, &c.

A Plea of Not Guilty in an Appeal of Mayhem. Hanſ. 271.

(3.) And the ſaid *W. L.* in his own Perſon [or *perſonally*] comes and defends the Force and Injury, when, &c. and all the Felony and Mayhem, and whatſoever, &c. and ſaith, that he is in no wiſe guilty thereof; and of this he puts himſelf upon his Country, and the ſaid *A.* [*the Plaintiff*] doth likewiſe the ſame, &c.

A Plea of Son Aſſault Demeſne. Hanſ. 277.

(4.) And the ſaid *E. S.* in his proper Perſon [or *perſonally*] comes and defends the Force and Injury, when, &c. and the whole Felony and Mayhem, and whatſoever, &c. and ſaith, that the ſaid *W. M.* ought not to maintain his ſaid Appeal againſt him, becauſe he ſaith, that the ſaid *W. M.* at the ſaid Time, when the ſaid *Mayhem* is ſuppoſed to have been done, made an Aſſault upon him the ſaid *E.* at *London*, to wit, in the Pariſh and Ward aforeſaid, and would then and there have beaten, wounded, and ill treated the ſaid *E.* but for that the ſaid *E. S.* then and there defended himſelf againſt the ſaid *W. M.* and ſo the Injury, if any then and there happened to the ſaid *W.* it was from his own Aſſaulting of him the ſaid *E. S.* and in the Defence of him the ſaid *E.* and this he is ready to verify, as the Court ſhall direct: Wherefore he prays Judgment, whether the ſaid *W.* ought to maintain his ſaid Appeal againſt him, &c.

A Replication de Injuria ſua propria, to a Plea of ſon Aſſault Demeſne.

(5.) And the ſaid *W.* replies, that he ought not to be precluded from having his ſaid Appeal againſt the ſaid *E.* becauſe he ſaith, that the ſaid *E.* at the Time of committing the ſaid Felony and Mayhem aforeſaid, felonioufly mayhemed the ſaid *W.* at, &c. [*ſuch a Place*] in the Manner as the ſaid *W.* above complains againſt the ſaid *E.* of his own Wrong, and without any ſuch Cauſe as is alledged above by the ſaid *E.* in his Plea; and this he prays may be enquired of by the Country, and the ſaid *E.* doth likewiſe the ſame, &c.

Appeal

Appearances.

(1.) *Yorkſhire*, *ſſ.* THE Sheriffs were commanded, that they ſhould take *A. B.* late of ſuch a Place, *&c.* if, *&c.* and ſafely, *&c.* ſo that they might have his Body here at this Day (to wit) in fifteen Days from *Eaſter-day*, to anſwer to *F. H.* in an Action, that he render to him 10 *l.* which he owes him, and unjuſtly detains, *&c.* and now here at this Day comes the ſaid *A.* in his proper Perſon, and ſaith, that he, by Virtue of the Writ aforeſaid, was arreſted by *W. S.* Eſq; Sheriff of the County aforeſaid; and that he and divers other Perſons, his Friends, at his Requeſt, became, and are bound by their Writing Obligatory to the ſaid Sheriff in 40 *l.* upon Condition, that if the ſaid *A.* ſhould perſonally appear here at this Day, to anſwer to the ſaid *F.* in the ſaid Action; and as well for their Indemnity, as for his Security, prays, that his Appearance here at this Day may be recorded: Whereupon the Appearance of the ſaid *A.* here at this Day, is by the Juſtices here recorded, *&c.*

The Entry of an Appearance upon a Capias in Debt.

Off. Brev. 9.

(2.) *Lincoln*, *ſſ.* Be it remembered, that on *Friday* next after fifteen Days of *Eaſter*, this ſame Term, *A. W.* comes here into Court in his own Perſon, and ſaith, that he, and ſeveral other Perſons his Friends, at his Requeſt, became bound and obliged to the Sheriff of the County aforeſaid, by their Bond or Obligation, in a great Sum of Money, that he ſhould perſonally appear here this Day, to wit, on the ſaid *Friaay* next after fifteen Days of *Eaſter*, this ſame Term, to anſwer to *M. T.* Gentleman, one of the Attornies of this his Majeſty's Court of Common Pleas, according to the Liberties and Privileges of the ſaid Court, Time out of Mind, uſed and approved therein, in an Action of Debt; and as well for his own Indemnity, as for the Security of his Friends, he

The like upon an Attachment of Privilege.

he prays, that his Appearance there at this Day may, by the Juſtices of this Court, be recorded; and the ſame, by the Juſtices of this Court, is here this Day recorded, &c.

Off. Brev. 9.

Upon an Attachment of Contempt.

(3.) *Devonſhire*, ſſ. Be it remembered, that *W. M.* of *B.* in the County of *Devon*, Yeoman, comes here into this Court on the 18th Day of *April*, this ſame Term, in his own Perſon, and ſaith, that he, and ſeveral other Perſons his Friends, at his Requeſt, became bound and obliged to the Sheriff of the County aforeſaid, by their Bond or Obligation, in a great Sum of Money, that he ſhould perſonally appear here this Day, to wit, on *Friday* next after fifteen Days of *Eaſter*, to anſwer to our Sovereign Lord the King of and concerning thoſe Things that ſhall be charged upon him by the Court, and to do and abide by whatever this his Majeſty's Court ſhall adjudge concerning him in this Particular; and as well for his own Indemnity, as for the Security of his Friends aforeſaid, he prays, that his Appearance here at this Day may be recorded by the Juſtices of this Court; upon which the Appearance of the ſaid *W.* here this Day is recorded by the ſaid Juſtices; and the ſaid *W.* is by this Court here diſcharged from his Contempt aforeſaid, &c.

Off. Brev. 10.

The Record of an Appearance to a Common Writ.

(4.) *Suffolk*, ſſ. The Sheriff was commanded that he ſhould take *H. C.* if, &c. and that he ſhould ſafely, &c. ſo that he might have his Body here at this Day (to wit) on the Morrow of *All-Souls*, to anſwer to *F. W.* in an Action of Debt, &c. At which Day the ſaid *H.* comes here and appears by *R. S.* his Attorney, and prays, that his Appearance may be recorded, and it is here recorded by this Court, &c.

Off. Brev. 10.

The like upon an Attachment of Contempt.

(5.) *Devonſhire*, ſſ. Be it remembered, that *W. M.* of *B.* in the County of *Devon*, Hatter, comes here into this Court, on the 18th Day of *April*, this ſame Term, in his own Perſon, and ſaith, that he, and ſeveral other Perſons his

Friends, at his Requeſt, by their Writing Obligatory, became bound and obliged to the Sheriff of the County aforeſaid in a great Sum of Money, that he ſhould perſonally appear here at this Day, to wit, on *Friday* next after the Morrow of the *Aſcenſion of our Lord*, to anſwer to our Sovereign Lord the King, of and concerning thoſe Things which ſhould then and there be objected to him [or *laid to his Charge*] by this Court, and to do and abide by what this Court of our ſaid Sovereign Lord the King ſhall adjudge concerning him in this Caſe; and as well for his Indemnity, as for the Security of his Friends, he prays, that his Appearance here at this Day may be recorded by the ſaid Juſtices: Whereupon the Appearance of the ſaid *W.* here at this Day is recorded by the Juſtices aforeſaid; and the ſaid *W.* is by the Court here diſcharged from his Contempt aforeſaid, *&c.*

Arbitrament.

(1.) BE it remembered, that this 11th Day of, *&c.* *A. B.* and *C. D.* being deſirous to end and determine diverſe Controverſies, Suits, and Quarrels that have been between them, for which there is no other Remedy but by perſonal Action, or Suit in Equity, did agree to ſubmit, and did ſubmit and refer all the ſaid Controverſies, Suits and Quarrels to the Award of *E. F.* and *G. H.* Arbitrators indifferently choſen between them, to be made in Writing under the Hands and Seals of the ſaid Arbitrators, before the Day of next enſuing, and the ſaid Parties did mutually promiſe and oblige themſelves reſpectively, that they would perform and execute ſuch Award as the Arbitrators ſhould make in the Premiſſes; and the ſaid Parties did further agree that their ſaid Submiſſion ſhould be made a Rule of

A Form of a Submiſſion to an Arbitration according to the Statute for making an Award by Rule of Court.

of his Majeſty's Court of Common Pleas [or *King's Bench*] at *Weſtminſter*; and that they would finally be concluded by the Arbitration that ſhall be made concerning the Premiſſes by the ſaid Arbitrators, purſuant to ſuch Submiſſion.

The Condition of an Arbitration Bond.

(2.) *Know all Men by theſe Preſents, that I* A. B. *of* [ſuch a Place and ſuch a Trade] *am held and firmly bound to* C. D. *of*, &c. *in One hundred Pounds*, &c. [ſo go on with the Bond to the Words] *and in the Year of our Lord* 1718. *The Condition of this Obligation is ſuch, that if the above bounden* A. B. *his Heirs, Executors, and Adminiſtrators, and every one of them, do and ſhall, for his and their Part and Behalf, well and truly in all Things ſtand to, obey, abide, perform, fulfil, and keep the Award, Order, Arbitrament, End, and final Determination of* J. C. *of* Hackney *aforeſaid, Eſq*; R. D. *of the ſame, Eſq*; *and* J. W. *of the ſame, Eſq*; *or any two of them, Arbitrators indifferently elected and named, as well on the Part and Behalf of the above bounden* A. B. *as of the above named* C. D. *to arbitrate, award, order, judge, and determine of and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits, Quarrels, Controverſies, Treſpaſſes, Damages, and Demands whatſoever, at any Time heretofore had, moved, brought, commenced, ſued, proſecuted, done, ſuffered, committed, or depending by and between the ſaid Parties, or either of them, ſo as the ſaid Award be made by the ſaid Arbitrators, or any two of them, and ready to be delivered to the Parties in Difference or ſuch of them as ſhall deſire the ſame on or before the* 14*th Day of* March *next, then this Obligation to be void, elſe to remain in full Force and Virtue*; *and it is alſo agreed by and between the ſaid* A. B. *and* C. D. *that this Submiſſion to the ſaid Award, ſo to be made as aforeſaid, ſhall be made a Rule of his Ma-*

jeſty's Court of King's Bench at Weſtminſter, *purſuant to the late Act of Parliament for that Purpoſe.*

Affidavit of the Execution of the Arbitration Bond.

(3.) *J. T.* of *London*, Gent. maketh Oath, that on or about the 28th Day of *January* laſt paſt, he this Deponent did ſee *A. B.* ſign, ſeal, and, as his Act and Deed, deliver unto the ſaid *C. D.* one Bond or Obligation, baring Date the ſaid 28th Day of *January*, with a Condition thereto for the Performance of an Award to be made by *J. C.* of, *&c.* and *J. W.* of, *&c.* and *R. D.* of, *&c.* or any two of them, of all Actions and Demands whatſoever between them the ſaid *C. D.* and *A. B.* and it was alſo thereby agreed by the ſaid *A. B.* that the ſaid Submiſſion to the Award of the ſaid Arbitrators ſhould be made a Rule of his Majeſty's Court of King's Bench at *Weſtminſter*, purſuant to the Act of Parliament for that Purpoſe. And this Deponent further ſaith, that the Name of him this Deponent ſubſcribed as a Witneſs thereto, is the proper Hand-Writing of him this Deponent.

James Trueman.

The Rule *of Court thereupon.*

(4.) Upon reading of the Affidavit of *T.* Gent. the Writing Obligatory, and Condition of the ſame, bearing Date the 28th Day of *January*, in the Year of our Lord 1720, in due Manner executed between the Parties, it appears here to this Court, that they have referred all and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits, Debts, Debates, Accounts, Specialties, Judgments, Executions, Quarrels, Controverſies, Treſpaſſes, Damages, and Demands whatſoever, at any Time before the Date of the

Writing Obligatory aforeſaid here made, moved, commenced, proſecuted, acted, committed, or permitted by or between the Parties aforeſaid, or either of them, to the Arbitrament, and final Determination of *D. D.* of *Hackney*, Eſq; *J. C.* of the ſame, Eſq; and *C. W.* of the ſame, Eſq; or any two of them, ſo that they publiſh their Arbitrament in Writing under their Hands and Seals, on or before the 14th Day of *February* next enſuing the Date of the Writing Obligatory aforeſaid; and laſtly it appears to this Court here, that the Parties aforeſaid ſubmitted and agreed, that that Submiſſion ſhould be made a Rule of this Court: Therefore it is ordered, that the Submiſſion aforeſaid, made in the Manner and Form aforeſaid, according to the Form and Effect of the Statute for that Purpoſe ſo lately made and provided, be entered and made a Rule of this Court upon the Motion of Mr. *Theed*.

The Rule *of* Reference *to a Gentleman preſent at the Sittings, made a* Rule *of* Court.

(5.) It is ordered, that the Order made at the Sittings held at *Weſtminſter*, in the Great Hall of Pleas there, on *Monday* (to wit) the 1ſt Day of *November*, in the ſeventh Year of the Reign of his preſent Majeſty [or *of our Sovereign Lord King* George *the Second*] before *Philip* Lord *Hardwick*, his ſaid Majeſty's Chief Juſtice aſſigned to hold Pleas in the Court of our ſaid Sovereign Lord the King, before the King himſelf, be entered and made a Rule of this Court; which Order follows in theſe Words, (to wit) It is ordered by the Conſent of both Parties, their Counſel, and Attornies, that the Matters in Difference between the Parties aforeſaid, be referred to the Award and final Determination of *J. S.* Eſq; ſo that he publiſh his Award between the ſaid Parties before the firſt Day of the next Term; and neither

neither the ſaid Plaintiff or Defendant ſhall commence any Suit in the Court of Chancery, or in any other Court of Equity, contrary to the Award aforeſaid, for or concerning his Arbitratorſhip in this Cauſe. On the Motion of Mr. *Prime*.

The Award thereon.

(6.) Having heard the Parties fully to the Matters in Difference between them, referred to me, I do award, That the Defendant do pay to the Plaintiff [*ſo much*] at [*ſuch a Place*] on [*ſuch a Time*] and that upon the Payment thereof each Party ſhall execute to the other a Releaſe under their ſeveral Hands and Seals, of all Matters in Difference between them in the ſaid Cauſe. In Witneſs whereof I have hereunto ſet my Hand the firſt Day of *March* 1734.

J. S.

An Award made by three Foremen of the Jury, purſuant to a Rule of Reference at Niſi Prius.

(7.) *Whereas at the Sittings of* Niſi Prius, *held at the* Guild-Hall *of the City of* London, *before* Philip *Lord* Hardwick, *Lord Chief Juſtice of his Majeſty's Court of King's Bench at* Weſtminſter, *the* 15*th Day of* February *laſt, a Cauſe came on to be tried wherein* J. M. *was Plaintiff, and* R. E. *Defendant; and on ſuch Trial by Conſent of the ſaid Parties, their Counſel, and Attornies, an Order or Rule was then made, that the ſaid Cauſe, and all other Differences whatſoever, between the ſaid Parties, ſhould be referred to* A. B. C. D. *and* E. F. *the three Foremen of the Jury, impanelled and ſworn to try the ſaid Cauſe, or any two of them, to hear and determine all the ſaid Matters and Differences, ſo as the ſaid* A. B. C. D. *and* E. F. *or any two of them, ſhould make and*

publiſh their Award in Writing, on or before the 1ſt Day of the next Term. Now we the ſaid A. B. C. D. *and* E. F. *in Purſuance of the ſaid Rule or Order of Reference, having thoroughly examined and conſidered the Matters to us referred aforeſaid, do award and order of and concerning the Premiſſes in Manner and Form following:*

Imprimis, *We do award and order, that the ſaid* R. E. *ſhall well and truly pay, or cauſe to be paid unto the ſaid* J. M. *the Sum of* 60 *l. of good and lawful Money of* Great Britain, *on the* 16*th Day of* May *next, at the Houſe of* J. D. *ſituate in* Fleet-ſtreet, London, *commonly called or known by the Name of* Nando's *Coffee-Houſe, between the Hours of Nine and Eleven of the Clock in the Forenoon of the ſame Day.*

Item, *We do award and order, that the ſaid* J. M. *ſhall, upon Payment of the ſaid Sum of* 60 *l. execute to the ſaid* R. E. *a general Releaſe of all Actions and Demands until the ſaid* 15*th Day of* February *laſt; and alſo that the ſaid* R. E. *ſhall at the ſame Time execute to the ſaid* J. M. *the like Releaſe. In Witneſs whereof we have hereunto ſet our Hands and Seals this* 29*th Day of* April, *in the* 8*th Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, of* Great Britain, France, *and* Ireland, *King, Defender of the Faith,* &c. *and in the Year of our Lord* 1735.

Interrogatories *to be adminiſtered to* R. E. *in his Majeſty's Court of King's Bench, concerning a* Contempt *ſuppoſed to be committed by him againſt the ſaid Court.*

Interrogatories exhibited on an Attachment of Contempt in not performing an Award.

(8.) *Imprimis,* Was you at any Time (and when) ſerved with, or had delivered to you, a Rule or Paper Writing, purporting to be a Rule of his Majeſty's Court of King's Bench, or Copy thereof; and what were the Contents of the ſaid Rule or Paper Writing, and Copy thereof? Was the ſame to the Effect, or of the Tenor fol-

following? *Thurſday* next after the Feaſt of *Eaſter*, in the 8th Year of the Reign of King *George* the Second, *J. M.* againſt *R. E.* It is ordered, that this Order made, &c. [*ſo inſert the Rule* verbatim] by the Court. Who ſerved the ſaid Rule or Paper Writing upon you, or delivered it or a Copy thereof to you? Did the Perſon who ſerved the ſaid Rule or Paper Writing to you, acquaint you with the Contents thereof, and deliver you a Copy thereof? What was the Tenor, Purport, or Meaning of the ſaid Rule or Paper Writing ſo ſhewn or delivered unto you, as you then underſtood, or have ſince been informed? By whom, and about what Time? When and by whom were you firſt acquainted with the Contents of the ſaid Rule or Paper Writing, and did you know thereof? What did you then or at any Time before or ſince ſay, whether you would or would not pay the Money mentioned in the Award, mentioned in that Rule of Court? Have you not declared you would never pay the ſaid Money, or perform the ſaid Award? And what have you at any Time, and when, ſaid either before or after the Service of the ſaid Rule, as to your refuſing or not paying the ſaid Money, or not performing the ſaid Award? Declare the Truth of all and every the Matters inquired of you by this Interrogatory.

Item, Do you know of any, and what Award at any Time and when, made by any, and what Perſon or Perſons, in Purſuance of the ſaid Rule, inquired of by the preceding Interrogatory? Were the names of Perſons or Arbitrators, that made ſuch Award, *A. B. C. D.* and *E. F.* or what other Name or Names were they known or called by; and what was the Tenor of ſuch Award? Was it to the Tenor following? that is to ſay, Whereas a Sitting of *Niſi Prius* [*ſo inſert the Award* verbatim] When were you firſt or at any other Time acquainted with ſuch Award, by any, and what Perſon or Perſons? was you at any Time, and when, ſerved with, or had delivered to you, a Copy of the ſaid Award inquired of by any, and what Perſon or Perſons? and was you at any Time,

and when, required or deſired by any, and what Perſon or Perſons, to pay the Sum of 60 *l.* in the ſaid Award mentioned, or any other, and what Sum to *J. M.* in the ſaid Award named, or to perform the ſaid Award? and did you at any Time or Times, and when, and how often refuſe or neglect to pay the ſaid 60 *l.* to the ſaid *J. M.*? Were you on the 16th Day of *May* laſt, at *Nando*'s Coffee-Houſe, *London*, in the ſaid Award mentioned, between the Hours of Nine and Eleven of the Clock, with the ſaid 60 *l.* ready to pay the ſame to the ſaid *J. M.*? and if ſo, how long did you continue there with the ſaid 60 *l.* to pay the ſame to the ſaid *J. M.*? or have you at any Time, and when, and where, and in whoſe Preſence, paid the ſaid 60 *l.* to the ſaid *J. M.*? Declare the Truth of all and every the Matters inquired of you by this Interrogatory.

Item, Were you not ſerved with a Rule of Court, the Tenor of which is as followeth? that is to ſay, [*and ſo inſert the Rule for the Attachment*] and when did you ſee or receive, or had the Copy thereof? And was the ſaid 60 *l.* at any Time, and when, demanded of you, and by whom? And why did you not pay the ſaid 60 *l.*? Declare the Truth of all and every the Matters inquired of you by this Interrogatory.

J. C.

Aſſignee and Aſſignment.

The Manner of pleading the Aſſignment of a Term, to charge the Aſſignee with the Rent, after the Death of Tenant for Life.

(1.) *AFTER ſhewing a Term granted to* J. L. *and the Reverſion conveyed to* M. T. *it is ſufficient to ſay thus:* And the ſaid *M.* being ſo ſeiſed of the Reverſion aforeſaid, and the ſaid *J. L.* being ſo poſſeſſed of the Intereſt of his Term aforeſaid, he the ſaid *J. L.* afterwards [*ſuch a Day and Year*] aſſigned all his Intereſt of the Term aforeſaid, in the Tenements aforeſaid, with

with the Apurtenances, to the ſaid *J. G.* by Virtue of which ſaid Aſſignment, he the ſaid *J. G.* was poſſeſſed of the Intereſt aforeſaid of the ſaid Term of and in the Tenements aforeſaid, with the Appurtenances, and he the ſaid *J. G.* being ſo poſſeſſed of the Intereſt of the Term aforeſaid, of and in the Tenements aforeſaid, with the Appurtenances; and the ſaid *M.* being ſo ſeiſed of the Reverſion aforeſaid, he the ſaid * *G.* afterwards, to wit, [*ſuch a Day and Year*] at *S.* aforeſaid died, after whoſe Death the ſaid *J. G.* entered into the Tenements aforeſaid, with the Apurtenances, and was thereof poſſeſſed, by Virtue of the Demiſe and Aſſignment aforeſaid; and the ſaid *J.* being ſo poſſeſſed thereof, and the ſaid *M.* being ſo ſeiſed of the Reverſion aforeſaid, of the Tenements aforeſaid, with the Appurtenances, the ſaid 5 *l.* of the Rent for one half Year, ended at the Feaſt of St. *Michael* the Archangel laſt paſt, were in Arrear at the ſaid Feaſt, and are now unpaid to the ſaid *M.* whereby an Action accrued, &c. 2 Saund. 253. * The Tenant for Life.

Attachment of Privilege.

K. B.

(1.) *GEORGE* the Second, by the Grace of God of *Great Britain*, *France*, and *Ireland*, King, Defender of the Faith, &c. To the Sheriffs of *London* Greeting: We command you, that you attach *W. P. T. S.* and *R. A.* if they ſhall be found in your Bailiwick, and ſafely keep them, ſo that ye have their Bodies before us at *Weſtminſter*, on *Wedneſday next after three Weeks of St.* Michael, to anſwer to *W. J.* Gentleman, one of the Clerks of *Edward Ventris*, being our Chief Clerk appointed to inrol Pleas in our Court before us, according to the Liberties and Privileges for ſuch Chief Clerk and his Clerks, Time imme-

For a Clerk to the Chief Clerk of the Court of King's Bench. Mo. Intr. 214, 215. Bro. Va. Me. 524. 1 Inſtr. Cl. 132. Cl. Man. 10.

immemorial uſed and approved of therein, in an Action of Treſpaſs [*Treſpaſs upon the Caſe, Trover and Converſion, Breach of Covenants*, or *Debt, as the Caſe is*] and have you then there this Writ. Witneſs *Philip* Lord *Hardwick*, at *Weſtminſter*, the 23d Day of *June*, in the Ninth Year of our Reign,

Ventris.

K. B.

For an Attorney of the ſame Court.

(2.) *As in the former to the Return* (then you ſay) to anſwer to *R. R.* Gentleman, being one of the Attornies of our Court before us, according to the Liberties and Privileges for ſuch Attornies, and other Officers of the ſame Court, Time immemorial (or *Time out of Mind)* therein uſed and approved of, in an Action, *&c.* [*as in the former.*]

C. B.

For an Attorney of the Common Pleas. Mo. Intr. 215. 1 Inſtr. Cl. 306.

(3.) George the Second, *&c.* To the Sheriffs of *London* Greeting: Do you attach *C. D. E. F. &c.* if they ſhall be found in your Bailiwick, and ſafely keep them, ſo that you have their Bodies before our Juſtices at *Weſtminſter*, on *Wedneſday next after three Weeks of St.* Michael, to anſwer to *A. B.* Gentleman, one of the Attornies of our Court * *of the Bench*, according to the Liberties and Privileges of the ſame Court for ſuch Attornies and other Officers of the ſame Bench, Time immemorial [or *Time out of Mind*] therein uſed and approved of, in an Action of Treſpaſs [or *if you'll follow the very Words*] in a Plea of Treſpaſs. [*Treſpaſs upon the Caſe*, or *whatever elſe the Action be*] and have you there this Writ. Witneſs Sir *Robert Eyre*, Knt. at *Weſtminſter*, the 23d Day of *June*, in the Ninth Year of our Reign.

* Or rather, Of Common Pleas.

Note; *If you mention in the* Attachment of Privilege, *the Action to be in* Treſpaſs, *yet you may*

may declare in any other perſonal Action, and ſuch Attachment *will warrant the* Declaration: *But ſince the late Act of Parliament which orders an Affidavit to be made of the Nature and Quantity of the Plaintiff's Demand, it is proper to mention the Nature of the Action in the Writ.*

If it be for one of the Prothonotary's Clerks, then thus:

(4.) ——— To anſwer to *A. B.* Gentleman, one of the Clerks of Sir *George Cook*, Knt. Chief Prothonotary [*if to the ſecond Prothonotory, then thus*] One of the Clerks of *Richard Thompſon*, Eſq; ſecond Prothonotary; [*if to the third Prothonotary, then thus*] One of the Clerks of *Thomas Borrett*, Eſq; one of the Prothonotaries of our Court of * Common Pleas, according to the Liberties and Privileges of the ſame Court for ſuch Clerks and other Officers of the ſame Court of Common Pleas [or *of the ſame Bench*] Time immemorial therein uſed and approved of, in an Action, *&c.* Or the Bench.

Attachments of Contempt.

C. B.

(5.) George the Second, *&c.* To the Sheriff of *Middleſex*, Greeting: Do you attach *M. J.* one of the Attornies of our Court of Common Pleas, ſo that you have him before our Juſtices at *Weſtminſter*, on *Monday next after the Octaves of St.* Martin, to make anſwer to us of and concerning thoſe Things, which ſhall then on our Behalf be laid to his Charge; and have you there this Writ. Witneſs Sir *Robert Eyre*, Knt. the 23d Day of *October*, in this Ninth Year of our Reign. If againſt an Attorney, thus. Off. Brev. 12.

There is no Difference, only in not naming him an Attorney. If againſt another Perſon.

K. B.

K. B.

Attachment of Contempt.

(6.) George the Second, &c. To the Sheriffs of *London*, Greeting: We command you, that you attach *A. B.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us, at *Weſtminſter*, on *Wedneſday next after fifteen Days of* Eaſter, to make anſwer to us of certain Treſpaſſes and Contempts done by him in our Court before us; and have you *then* there this Writ. Witneſs *Philip* Lord *Hardwick*, &c.

K. B.

An Attachment in an Appeal of Murder. Theſ. Brev. 4.

(7.) George the Second, &c. To the Sheriffs of *Middleſex*, Greeting: If *A. M.* Widow, who was the Wife of *W. M.* gives you Security, that ſhe will proſecute her Complaint, then attach *C. T.* late of [*ſuch a Place*] by his Body, according to the Laws and Cuſtoms of our Kingdom of *Great Britain*, ſo that you have him before us, *on the Octaves of St. Hillary*, whereſoever we ſhall then be in *England*, to anſwer to the ſaid *A.* concerning the Death of the ſaid *W.* her late Husband, whereupon ſhe hath appealed him; and have you then there this Writ. Witneſs, &c.

K. B.

An Attachment to bind a Man to his Good Behaviour. Theſ. Brev. 4.

(8.) George the Second, &c. To the Sheriff of *Middleſex*, Greeting: Foraſmuch as we are given to underſtand and be informed, by the Relation and Teſtimony of many worthy Perſons of your County, that *R. R.* of [*ſuch a Place*] is not of a good Name, Character, or honeſt Converſation, but of an ill Diſpoſition, a Barreter and Diſturber of our Peace, ſo that he is likely to commit Murder, Homicide, create Strifes, and Diſcords, and other perſonal Damage and Injury may daily ariſe to our Subjects by means of the Premiſſes: Therefore we command you, that you omit

omit not by reaſon of any Liberty in your Bailiwick, but attach the ſaid *R.* ſo that you have him before us [*at ſuch Return*] whereſoever we ſhall then be in *England:* Then to find before us ſufficient Security for his Good Behaviour toward us and every of our Subjects, according to the Form of the Statute in that Caſe made and provided, with a certain Pain then to be impoſed on him by us; and when the ſaid *R.* is ſo attached by Virtue of this Writ, do you let him go on ſufficient Bail, who will undertake under a certain Penalty to be impoſed on them, and every of them, as well for his Appearance at that Day, as for his good Behaviour upon Bail; in the mean Time, taking only for your Duty in this Particular 2 *s.* 4 *d.* and this you are in no wiſe to omit, at your Peril; and have you then there this Writ. Witneſs, *&c.*

K. B.

(9.) George *&c.* We command you, that you attach *A. B.* ſo that you have him before us at *Weſtminſter* [on *ſuch a Return*] to make Anſwer, as well to us, for his Contempt in proſecuting in the Court Chriſtian, contrary to our Royal Prohibition, againſt *J. D.* Adminiſtratrix of the Goods of *J. M.* deceaſed, as alſo to *C. D.* for the Damage and Injury done him in this Caſe; and have you then there this Writ. Witneſs, *&c.*

An Attachment upon a Prohibition. Theſ. Brev. 5.

K. B.

(9.) George the Second, *&c.* To the Sheriff of *Middleſex*, Greeting: We command you, that you attach *L. M.* Clerk, Rector of the Pariſh Church of *All-Saints* in the City of *L.* ſo that you have him before us at *Weſtminſter* [*ſuch a Day*] to make anſwer, as well to us, for a certain Contempt by him done to us, as to *R. C.* one of the Inhabitants of the ſaid Pariſh, for certain Damages and Injuries done him by the ſaid *L.* contrary to the Tenor of our Writ of Prohibition lately directed

An Attachment for a Contempt, for ſuing in the ſpiritual Court, after a Prohibition delivered. Theſ. Brev. 5.

rected and delivered to the ſaid *L.* whereupon the ſaid *L.* is impleaded in our Court before us; and have you then there this Writ. Witneſs, &c.

K. B. or C. B.

Upon a Reſcue. Theſ. Brev. 5.

(11.) —— To anſwer to *R. P.* in an Action, that foraſmuch as he the ſaid *R.* at *Weſtminſter*, had cauſed to be taken by *N. H.* his Servant, certain Chattels, for Cuſtoms and Services done to him, and the ſaid *N.* would have there detained thoſe Chattels in the Name of a Diſtreſs, according to the Laws and Cuſtoms of this Kingdom of *England*; wherefore the ſaid *T.* with Force and Arms there reſcued thoſe Chattels from the ſaid *N.* and did other Wrongs to him, &c.

If the Diſtreſs was made by the Plaintiff himſelf, and reſcued from him, then you ſay, That whereas he the ſaid *R.* at *Weſtminſter*, had taken certain Chattels, &c. (*mutatis mutandis*).

K. B. or C. B.

An Attachment for a Pound Breach. Theſ. Brev. 6.

(12.) —— To anſwer to *R. H.* in an Action; that foraſmuch as the ſaid *R.* in his Fee, at *H.* had cauſed certain Cattle to be taken by *N. H.* his Servant, for Cuſtoms and Services due to him; and the ſaid *N. H.* would have there impounded thoſe Chattels, according to the Laws and Cuſtoms of our Kingdom of *England*: Wherefore the ſaid *T.* with Force and Arms broke the Pound, and took and drove away the ſaid Cattle, and did him other Wrongs, &c.

Attainder.

(1.) AND the ſaid *Lawrence Evans*, by *J. S.* his Attorney, comes and defends the Force and Injury, when, &c. and craves Oyer of the ſaid Writing Obligatory, and it is read to him, &c. he alſo craves Oyer of the Letters of Adminiſtration of the Archbiſhop, and they are read to him in theſe Words [*here ſet them forth*] which being read and heard, the ſaid *L. E.* pleads, that the ſaid *J. P.* ought not to have his ſaid Action againſt him, becauſe, proteſting that the ſaid Writing Obligatory mentioned in the ſaid Declaration, and the ſaid Obligation above ſpecified in the ſaid Letters of Adminiſtration, are not one and the ſame Writing; the ſaid *L.* for Plea ſaith, that at the General Seſſions of the Peace of our Sovereign Lord the King, held for the County of *Middleſex*, at *Hicks's Hall* in St. *John's Street*, in and for the ſaid County of *Middleſex*, on *Tueſday* (to wit) the 7th Day of *May*, in the 7th Year of the Reign of his preſent Majeſty, before Sir *Henry Duttroncolt*, Bart. and others his Brethren, Juſtices of our ſaid Sovereign Lord the King aſſigned to keep the Peace in the ſaid County of *Middleſex*; and alſo to hear and determine divers Felonies, Treſpaſſes, and other Offences committed in the ſaid County, by the Oath of *J. H.* &c. [*naming the Grand Jury*] Good and lawful Men of the ſaid County of *Middleſex*, then and there ſworn, and charged to inquire for our ſaid Sovereign Lord the King, and the Body of the ſaid County, it was preſented, that the ſaid *W. M.* by the Name of *W. M.* late of the Pariſh of *St. Martin in the Fields* in the County of *Middleſex*, Labourer, and one *M. M.* his Wife, otherwiſe called *M. M.* late of the Pariſh aforeſaid in the County aforeſaid, Spinſter, one *J. S.* late of the Pariſh aforeſaid in the County aforeſaid, Labourer, and *J. T.* late of the Pariſh aforeſaid in the County aforeſaid, Labourer, on the 19th Day of *April*, in the 7th Year of the Reign of his preſent Majeſty, between the Hours of Eleven and Twelve in the Night Time of the ſame

1 Lut. 610. An Attainder at the Old Baily for a Burglary, pleaded in Bar of a Debt upon a Bond brought by an Adminiſtrator of the Perſon attainted.

The Preſentment of the Grand Jury.

ſame Day, with Force and Arms, &c. at the Pariſh aforeſaid in the ſaid County of *Middleſex*, then and there feloniouſly and burglariouſly broke and entered the Dwelling-Houſe of one *T. M.* there ſituate, and then and there feloniouſly put the ſaid *T. M.* and *J.* his Wife, then and there being in the ſaid Dwelling Houſe, in great Fear and Danger of their Lives, with an Intent then and there feloniouſly and burglariouſly to ſteal, take, and carry away the Goods, Chattels, and Monies of the ſaid *T. M.* then and there being in the ſaid Dwelling Houſe, againſt the Peace of our ſaid Sovereign Lord the King, his Crown, and Dignity, &c. Wherefore the Sheriff of the ſaid County of *Middleſex* was commanded, that he ſhould not omit, &c. but ſhould take the ſaid *W. M.* and the reſt [*naming them*] to anſwer, &c. Which Indictment the ſaid Juſtices of the Peace of our ſaid Sovereign Lord the King, afterwards *(to wit)* at the Gaol-Delivery of our ſaid Sovereign Lord the King of *Newgate*, held for the ſaid County of *Middleſex* at *Juſtice-Hall* in the *Old-Baily*, in the Suburbs of the City of *London*, on *Wedneſday (to wit)* on the 18th Day of the ſame Month of *May*, in the 7th Year aforeſaid, before *T. L.* Knt. Mayor of the City of *London*, Sir *G. T.* Knt. his Majeſty's Chief Juſtice of his Court of Common Pleas, Sir *J. E.* Knt. one of the Barons of his Majeſty's Court of Exchequer, Sir *P. W.* Knt. Sir *R. C.* Knt. Aldermen of the ſaid City of *London*, Sir *Salathiel Lovel*, Knt. Serjeant at Law and Recorder of the ſaid City of *London*, and others their Brethren, Juſtices of our ſaid Sovereign Lord the King, aſſigned to deliver his Gaol of *Newgate* aforeſaid, from the Priſoners then being therein, with their own Hands delivered in the Court of Record, there to be tried in due Form of Law: Whereupon at the ſame Delivery of the Gaol of our ſaid Sovereign Lord the King of *Newgate* aforeſaid [or rather *at the ſame Delivery of his ſaid Majeſty's Gaol of* Newgate *aforeſaid*] held for the ſaid County of *Middleſex*, at *Juſtice-Hall* aforeſaid, on the ſaid *Wedneſday* the

The Proceſs againſt the Felons.

The Delivery of the Indictment by the Juſtices at Hicks's Hall, to the Court of the Gaol-Delivery of Newgate.

18th Day of *May*, in the 7th Year aforeſaid, before the ſaid Juſtices of our ſaid Sovereign Lord the King, laſt named, and others their Brethren aforeſaid, the ſaid *W. M.* and the reſt [*naming them*] under the Cuſtody of Sir *J. S.* Knt. and Sir *W. C.* Knt. Sheriffs of the ſaid County of *Middleſex*, (to whoſe Cuſtody they had been before committed) for the Reaſon aforeſaid, perſonally appeared at the Bar, then being there conducted; and they forthwith being ſeverally allowed to acquit themſelves in what Manner they thought fit, of the Felony and Burglary aforeſaid, ſpecified in the ſaid Indictment, and above laid to their Charge. They the ſaid *W. M.* and *M. M.* *J. S.* and *J. T.* then ſeverally pleaded, that they were not guilty thereof; and therefore of their Guilt or Innocence they ſeverally put themſelves upon their Country: For which Purpoſe a Jury immediately appeared there, before his ſaid Majeſty's Juſtices laſt named, and others their Brethren aforeſaid, *&c.* and who neither, *&c.* to recognize, *&c.* And the Jurors of the Jury, then and there impanelled for that Purpoſe by the ſaid Sheriff (to wit) *T. T. &c.* [*naming them*] being called, appeared, who being choſen, tried, and ſworn to give their Verdict of and concerning the Premiſſes, declared upon their Oath, that the ſaid *W. M.* *J. S.* and *J. T.* were, and each of them was guilty of the Felony and Burglary above ſpecified in the ſaid Indictment, and therein ſeverally laid to their Charge, in ſuch Manner and Form, as by the ſaid Indictment it was above charged upon them; and that the ſaid *W. M.* and *J. S.* had not any Goods or Chattels, Lands or Tenements to the Knowledge of the ſaid Jurors; and the ſaid Jurors then further upon their ſaid Oath declared, that the ſaid *M. M.* was not guilty of the ſaid Felony and Burglary, ſpecified in the ſaid Indictment above laid to her Charge, as the ſaid *M.* had above alledged for herſelf in her Defence, nor had ever withdrawn herſelf (or *fled*) on that Occaſion; and thereupon it was forthwith demanded of the ſaid *W. M.* *J. S.* and *J. T.* ſeverally, by the ſaid Court

The Appearance of the Felons at the Bar;

their Plea of **Non Cul.**

The Verdict, That three were Guilty,

and as to one, that ſhe was Not guilty.

Court of our ſaid Sovereign Lord the King, before his ſaid Majeſty's Juſtices laſt named, whether they had or knew of any Thing to ſay for themſelves, why the ſaid Court ought not there to proceed to Judgment and Execution againſt them, upon the Verdict aforeſaid; who then ſaid nothing further than what they had ſaid before: Whereupon all and ſingular the Premiſſes being viewed, and there fully underſtood by the ſame Court, it was there adjudged by the ſame Court, that the ſaid *W. M. J. S.* and *J. T.* and each of them, ſhould be hanged up by their Necks till they ſhould be dead; and it was there further adjudged, that the ſaid *M. M.* ſhould be acquited of the Felony and Burglary above laid to her Charge, and ſpecified in the ſaid Indictment, and ſhould be therefrom diſmiſſed, as by the Record of the Indictment and Attainder aforeſaid, now remaining in the Court of our ſaid Sovereign Lord the King, before his ſaid Majeſty's Juſtices laſt mentioned, it doth more fully appear; and the ſaid *L.* further pleads, that the ſaid Verdict and Attainder now remain, and are in their full Force and Effect, not reverſed, revoked, vacated, or annulled; by means of which Felony and Burglary, and by Virtue of the Judgment and Attainder aforeſaid, the ſaid *W. M.* hath forfeited to his ſaid Majeſty the ſaid Debt of 200 *l.* and this the ſaid *L.* is ready to verify: Wherefore he prays Judgment, whether the ſaid *J.* ought to have his ſaid Action againſt him, *&c.* Together with this, that he is further ready to verify, that the ſaid *W. M.* above named in the ſaid Declaration, and the ſaid *W. M.* likewiſe above named in the Record of the Indictment, Attainder, and Conviction aforeſaid, are one and the ſame, and not different Perſons, *&c.*

The Court demand of the Priſoners what they have to ſay, why Judgment and Execution, &c.

The Judgment.

The Defendant found Not Guilty, acquitted.

Averment, that the Record is in full Force;

that the Felons Debts were forfeited.

Averment of Identity.

Attorn-

Attornment.

(1.) ——— To which Grant of the Reverſion of the ſixty Acres, made to the ſaid *R.* (*the Grantee*) in the Manner aforeſaid, he the ſaid *J. D.* then being poſſeſſed of the ſaid ſixty Acres, with the Appurtenances, in the Manner aforeſaid, then and there attorned and agreed; by Virtue of which Grant and Attornment, he the ſaid *R.* was ſeized of the Reverſion of the ſaid ſixty Acres, with the Appurtenances, in his Demeſne as of Fee; and being ſo ſeiſed, *&c.*

The Manner of pleading an **Attornment**, to the Grantee of a Reverſion in Fee. Ro. Entr. 238.

(2.) *After ſetting forth a Grant of the Reverſion of the Term to* T. D.] To have and to hold the ſaid Reverſion, with the Appurtenances, to the ſaid *T. D.* his Executors, Adminiſtrators, and Aſſigns, for and during all the reſt and Reſidue of the ſaid Term of 1000 Years, then to come and unexpired, as by the ſaid Indenture more fully may appear: To which Grant aforeſaid, the ſaid *R. C.* (then Tenant of the Tenements aforeſaid, with the Appurtenances, by Virtue of the ſaid Demiſe made to him as aforeſaid) afterwards, that is to ſay, on the 8th Day of *July* in the 8th Year of the Reign of his preſent Majeſty, at the ſaid Pariſh of *Clements Danes* attorn'd, and agreed; by Virtue of which Grant, and by means of the Attornment, the ſaid *T. D.* was poſſeſſed of the ſaid Reverſion of the Tenements aforeſaid, with the Appurtenances, for the Reſidue of the ſaid Term of 1000 Years, *&c.*

The like to a Grantee of the **Reverſion** of a Term. 2 Ven. 121.

Audita Querela.

Audita Querela, for that the Plaintiff had a Releaſe from one of the Adminiſtrators; and notwithſtanding that was taken in Execution.

(1.) OUR Sovereign Lady the Queen hath ſent to her Juſtices of the Common Pleas her Writ Cloſe in theſe Words: Eliſabeth, by the Grace of God of *England*, *France*, and *Ireland*, Queen, Defender of the Faith, *&c.* To our Juſtices of the Common Pleas, Greeting: Whereas it is ſhewn to us by the grievous Complaint of *John Chetham* of *St. Edmund's Bury* in the County of *Suffolk*, Gent. that *Edward Higham*, Gent. and *Alice* his Wife, Adminiſtratrix of the Goods and Chattels, which were of *Edward Bull*, Gent. in our Court before us, by our Writ impleaded the ſaid *John* in an Action, that he ſhould render to them 100 *l.* which was unjuſtly detain'd from them; and the Proceſs therein between the Parties aforeſaid was continued before us, 'till it was conſider'd before us, that the ſaid *Edward* and *Alice* ſhould recover as well the ſaid 100 *l.* as alſo 6 *l.* for their Coſts and Expences by them the ſaid *Edward* and *Alice* laid out about their Suit in that Cauſe; and although *John Bull*, one of the Adminiſtrators of the Goods and Chattels, which were of the ſaid *Edward*, who died inteſtate, as it is ſaid, after the ſaid Judgment was given, and before the Execution of the ſame, by a Releaſe in Writing of him the ſaid *John Bull*, ſealed with his Seal, bearing Date the 25th Day of *May* laſt paſt, *Reciting*, that whereas the ſaid *Edward* had mowed, received, and taken to the proper Uſe of the ſaid *John Chetham*, of the Goods and Chattels of him the ſaid *J. C.* 287 Acres of Wheat, Oats, and Barley, or thereabouts, lately growing in and upon his Soil, for which he ought to have paid to the ſaid *J. C.* 500 Comb of Wheat, Oats, and Barley, which were worth in that Year, at leaſt 140 *l.* in Money, in Default of the Payment of which ſaid 500 Comb of Wheat, Oats, and Barley, the ſaid *J. C.* received of the ſaid *Edward Bull* 100 *l.* And the ſaid *J. Bull*,

The Judgment.

The Releaſe.

as

as well for discharging Part of the said 500 Comb of Wheat, Oats, and Barley, as for divers good and reasonable Causes and Considerations thereunto especially moving him, by his said Writing did remise and release to the aforesaid *J. C.* his Executors, Administrators, and Assigns, and every of them, all Accounts, Debts, Executions, and Demands whatsoever, as by the same Writing before us in our Chancery may more fully and at large appear; as the said *J. C.* by all convenient ways and means is ready to verify: Nevertheless the said *Edward* and *Alice* are prosecuting their Execution, as well for the said 100 *l.* as the said six Pounds against him the said *J. C.* in our said Court before us, to the great Damage and Grievance of him the said *J. C.* and against the Force, Form, and Effect of the said Writing. And forasmuch as the said *J. C.* humbly besought us to grant him proper Relief; and because we would not, that the aforesaid *J. C.* should in that Particular be any ways injured, and being willing that Justice be done, we command you, that when you shall have heard the Complaint of the said *J. C.* in this Particular, and summoned before you the Parties aforesaid, and others that you shall think proper to be summoned before you, and heard their Reasons thereupon, Do you cause full and speedy Justice to be done to the said *J. C.* as of Right, and according to the Laws and Customs of this Kingdom ought to be done. Witness ourself at *Westminster* the 11th Day of *July*, in the 5th Year of our Reign. And hereupon the said *J. C.* comes here into this Court by *Christopher Crow* his Attorney, and brings here into Court the said Release abovementioned, dated the said 26th Day of *May*, in the 5th Year of our said Reign; and the said *Edward* and *Alice* here pray, that a Writ may issue, directed to the Sheriffs of *London*, for him to cause the said *J. C.* to answer concerning the Premisses; and further to do and abide by what this Court shall adjudge in this Case; and that the said Sheriffs, in the mean Time do altogether forbear executing any Writ of Execution

The Gravamen, that notwithstanding, he was taken in Execution.

The Mandatory Part of the Writ.

The Award of a Venire.

whatſoever of our ſaid Lord the King, directed to them, and doing any Thing thereon; and it is granted to them returnable here *from the Day of the* Holy Trinity *in three Weeks*, &c. And thereupon one *Richard Bracken* of *Cheſterton* in the County of *Cambridge*, Eſq; and *Owen Ratcliff* of *Gray's Inn*, Gent. come here into this Court, and become Bail for the ſaid *J. C.* that he ſhall appear at the Time aforeſaid, and ſo from Day to Day at every Day of the Action, until Judgment be given therein; and that the ſaid *J. C.* ſhall proſecute his Writ aforeſaid with Effect: And if Judgment ſhall happen to be given againſt him the ſaid *J. C.* in this Cauſe, that he ſhall ſurrender himſelf a Priſoner to his Majeſty's Priſon of the *Fleet*, to continue there on that Occaſion, or make Satisfaction to the ſaid *Edward* and *Alice*, for the Debt and Damages aforeſaid; and each of the ſaid Bail undertake in the Penalty of 100 *l.* and the ſaid *J. C.* doth undertake in the Penalty of 200 *l.* which they acknowledge to be levied upon their and every of their Lands and Chattels, to the Uſe of the ſaid *Edward* and *Alice*, if it ſhall happen the ſaid *J. C.* ſhall not proſecute his ſaid Writ with Effect, or make Default at any Day of the Action aforeſaid, or if Judgment be given therein againſt him, and he ſhall not ſurrender himſelf a Priſoner to his Majeſty's Priſon aforeſaid, there to remain 'till he ſhall make Satisfaction to the ſaid *Edward* and *Alice* for their ſaid Debt; at which Day, as well the ſaid *J. C.* by his ſaid Attorney, as the ſaid *Edward* and *Alice*, by *Francis Harpney* their Attorney, come here: And now the Sheriffs return, that the ſaid *Edward* and *Alice* have nothing, &c. Whereupon the ſaid *J. C.* ſaith, that the ſaid *J. Bull*, Senior Son of the ſaid *Edward Bull*, one of the Adminiſtrators of the Goods and Chattels, which were of the ſaid *Edward*, who died inteſtate, &c. after that the ſaid Judgment was given, and before the Execution thereof at *L.* by the written Releaſe of him the ſaid *J. B.* ſealed with his Seal, bearing Date the ſaid 25th Day of *May* laſt paſt, and

The Defendant gives Bail.

The Tenor of the Recognizance.

The Sheriffs Return,

The Allegation of the Plaintiff to verify his Writ.

and now brought into this Court, *reciting*, that whereas the ſaid *Edward* had reaped, received, and taken, and had to his own Uſe of the Goods and Chattels of him the ſaid *J. C.* 287 Acres of Wheat, Oats, and Barley in and upon, *&c.* [*ſo go on with the Releaſe as in the Writ*] as by the ſaid Releaſe it more fully appears, and prays Judgment, and that he, by Virtue of the ſaid Releaſe, may be diſcharged from any Charge whatſoever, by reaſon of the ſaid Judgment given as aforeſaid, for them the ſaid *Edward* and *Alice*, againſt him: And thereupon the ſaid *Edward* and *Alice* pray Leave to imparl thereto here until *in three Weeks from the Day of St.* Michael, and they have it, *&c.* The ſame Day is given to the ſaid *J. C.* to have, *&c.* which ſaid Day of Imparlance was adjourn'd by his Majeſty's Writ of Common Adjournment here, until *the Morrow of* All Souls, *&c.* at which Day, as well the ſaid *J. C.* as the ſaid *Edward* and *Alice*, by their ſaid Attorney, come here; and thereupon the ſaid *Edward* and *Alice* pray further Leave to imparl thereto here, until *the Octaves of St* Hillary; the ſame Day is given to the ſaid *J. C.* to be here, *&c.* And now here at this Day (to wit) on *the ſaid Octaves of St.* Hillary, as well the ſaid *J. C.* as the ſaid *Edward* and *Alice*, by their ſaid Attorney, come here; and thereupon the ſaid *E.* and *A.* ſay, that they ought not, by means of the ſaid Releaſe, or by any Thing above alledged, to be barred or delayed of having their Execution of the Debt and Damages aforeſaid, recover'd by the Judgment aforeſaid, becauſe they ſay, that before the ſaid *Edward* and *Alice* had impleaded the ſaid *J. C.* for their ſaid Debt, the ſaid *Edward Bull* died inteſtate; after whoſe Death Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits, that were of the ſaid *Edward* at the Time of his Death, was granted to the ſaid *Alice*, Relict, or late Wife of the ſaid *Edward*, according to the Form of the Statute in that Caſe lately made and provided, while ſhe was ſole and unmarried, by *Matthew*

The Defendants imparl.

The Continuances.

The Defendants Plea, That before the Defendants had impleaded the Plaintiff, Adminiſtration was granted to Alice, one of the Plaintiffs.

by Divine Providence Archbiſhop of *Canterbury*, Primate of all *England*, and Metropolitan, and ſhe on the 11th Day of *November*, in the Year of our Lord 1569. married him the ſaid *Edward*; and then the ſaid *Edward* and *Alice*, after their Marriage ſo had and ſolemniz'd, by Virtue of the Adminiſtration aforeſaid, granted to the ſaid *Alice* in the Manner aforeſaid, impleaded the ſaid *John Chetham* in this Court, for the ſaid 100 *l.* and the Proceſs between them was continued here in this Court, 'till it was adjudged in this Court, that the ſaid *Edward* and *Alice* ſhould recover againſt the ſaid *J. C.* as well the ſaid 100 *l.* as the ſaid 6 *l.* for their Damages, which they had ſuſtain'd by reaſon of detaining the Debt, by this Court here adjudged, as by the Record and Proceſs thereof now remaining in this Court, more fully may appear. Pending which Action between the ſaid *Edward* and *Alice*, and the ſaid *John Chetham* in this Court, the ſaid *John Bull*, on the 16th Day of *February*, in the Year of our Lord 1572. at *London* aforeſaid, at the Inſtance of the ſaid *J. Chetham*, and by Fraud and Contrivance between them, with an Intent to defraud the ſaid *Edward* and *Alice* of the ſaid 100 *l.* and with an Intent, that the ſaid *John*, after Adminiſtration granted to him, might releaſe the ſaid Debt of 100 *l.* to the ſaid *John Chetham*, (falſly ſuggeſting to the ſaid Archbiſhop, that Adminiſtration of all and ſingular the Goods and Chattels, Rights and Credits of the ſaid *Edward Bull*, of Right belong'd to him the ſaid *John*, as his Son,) obtain'd Adminiſtration of the Goods and Chattels, Rights and Credits to be committed to him and the ſaid *Alice*, by the ſaid Archbiſhop's Letters Adminiſtratorial; which ſaid *John Bull*, after Adminiſtration had and obtain'd in the Manner aforeſaid, by Colour thereof, at the Inſtance of the ſaid *John Chetham*, and by Covin and Contrivance before had between them, made the ſaid Releaſe: And although the ſaid Adminiſtration of the Goods, Chattels, Rights, and Credits, obtain'd by the ſaid *John Bull* and *Alice* in

That after Adminiſtration granted to her, ſhe married the other Plaintiff.

That Pending that Action J. B. who made the Releaſe, obtain'd Adminiſtration by Fraud,

and made the Releaſe by Fraud.

in the Manner aforeſaid, and the ſaid Letters of the ſaid Archbiſhop made to the ſaid *John Bull* for that Purpoſe (the Adminiſtration thereof before granted to the ſaid *Alice*, by the ſaid Archbiſhop, being in their full Force, and not judicially revoked, according to the Courſe of the Civil Law) were totally void in Law, and of no Effect: And although *William Drury*, Doctor of Laws, and the ſaid Archbiſhop's Commiſſary of his Prerogative Court of *Canterbury*, lawfully deputed, afterwards, to wit, on the 2d Day of *July* in the Year of our Lord 1574. at *London* aforeſaid, in the Pariſh and Ward aforeſaid, by a judicial Sentence in due Form of Law, pronounced and decreed the ſaid Letters Adminiſtratorial granted to the ſaid *John Bull*, in the Manner aforeſaid, to be a Nullity from the Beginning, and to be of no Effect in Law, as being ſurreptitiouſly obtain'd; and therefore then and there revoked the ſame, as by the Letters of the Archbiſhop, under the Seal of his Office, as Ordinary, which they the ſaid *Edward* and *Alice* bring here into this Court, teſtifying a Revocation of the ſaid Letters of Adminiſtration, more fully may appear; and this they are ready to verify: Wherefore they pray Judgment, and that an Execution for their Debt and Damages aforeſaid, recovered by the Judgment aforeſaid, may be adjudged to them, *&c.*

Tho' his Adminiſtration was illegal,

and revoked by Sentence.

Ro.Entr.159.

(2.) *ſſ.* **Our Sovereign Lord the King** hath ſent to his Juſtices aſſign'd to hold Pleas before him his Writ Cloſe in theſe Words: *ſſ.* **George** the Second, *&c.* To our Juſtices aſſigned to hold Pleas before us, *Greeting*: We have received Information by the grievous Complaint of *Thomas Doyton*, of, *&c.* in the County of *Suffolk*, Clerk, otherwiſe called, *&c.* That whereas one *William Andrews*, Citizen, *&c.* and *Lewis Simpſon*, Citizen, *&c.* of *London*, lately in our Court before us at *Weſtminſter*, by a Bill without our Writ, and by the Judgment of the ſame Court, had recovered againſt him the ſaid *Thomas*, as well a certain

An Audita Querela, for that the Plaintiff was taken upon an Execution, after he had been in Execution before, and made a voluntry Eſcape. Setting forth the Judgment.

Debt of 100 *l.* as 10 *l.* for their Damages, which they ſuſtained, as well by reaſon of detaining that Debt, as for their Expences and Coſts laid out by them about their Suit in that Cauſe, where-of he is convicted: And although after the Judgment aforeſaid was given, to wit on the 2d Day of *July*, in the 8th Year of our Reign, at *St. Edmond's Bury* in the County of *Suffolk*, that is to ſay, within the Liberty and Franchiſe then of Sir *Jermyn Davers*, Bart. the ſaid *Thomas* was taken and arreſted in Execution for the Debt and Damages aforeſaid, by *John Pridy* and *Henry Day*, by Virtue of a Warrant, lately before made and directed to the ſaid *J. P.* and *Henry*, by the ſaid Sir *Jermyn Davers*, by Virtue of a Mandate made and directed to the ſaid Sir *Jermyn Davers*, Bart. by —— Eſq; then Sheriff of the ſaid County of *S.* under the Seal of his Office, upon a Writ of *Capias ad Satisfaciendum*, at the Suit of the aforeſaid *W. A.* and *L. S.* for the Debt and Damages aforeſaid, lately before ſued out of our Court before us, at the Inſtance of the ſaid *W. A.* and *L. S.* and directed and delivered to the Sheriff of the ſaid County of *S.* which ſaid Sir *Jermyn Davers*, then (that is to ſay) on the ſaid 2d Day of *July*, in the ſaid 8th Year of our Reign, and before and after, had the full Power of executing and returning all and all Manner of Writs and Warrants to be executed within the Liberty aforeſaid; and the ſaid *Thomas* being ſo taken and arreſted was detained in Execution, until afterwards, to wit, on the 3d Day of *November*, in the 9th Year of our Reign, he the ſaid Sir *Jermin Davers* permitted him to go at large, whither he would, at *Southwark* in the County of *Surry*, the ſaid *W. A.* and *L. S.* having had no Satisfaction for their Debt and Damages aforeſaid, as the ſaid *T.* is ready to make appear in ſuch Manner as ſhall be thought proper; notwithſtanding which they the ſaid *W.* and *L.* have moſt unjuſtly ſued out an Execution upon the Judgment aforeſaid, for the Debt and Damages aforeſaid, againſt him the ſaid *T.* out of our ſaid Court

The Arreſt by Virtue of a Mandate to the Bailiff of a Liberty.

The Eſcape.

Court before us, and cauſed the ſaid *T. B.* to be taken and arreſted thereupon, and in our Priſon, under the Cuſtody of our Marſhal of our Marſhalſea before us to be detained, to the great Trouble and Vexation of the ſaid *T. B.* and againſt the Laws of our Kingdom of *Great Britain*: Wherefore, and inaſmuch as he hath humbly beſought us to provide him proper Relief in this Caſe; and becauſe we would, that the ſaid *T. B.* ſhould not in any wiſe be injured in this Caſe, and willing that Juſtice ſhould be done, we command you, that you, having heard the Complaint of the aforeſaid *T. B.* in this Caſe, and calling before you the Parties aforeſaid, and hearing their ſeveral Reaſons thereupon, do cauſe full and ſpeedy Juſtice, and what of Right, and according to the Law and Cuſtom of our Realm, ought to be done to the ſaid *T. B.* Witneſs ourſelf at *Weſtminſter*, the 26th Day of *October*, in the 9th Year of our Reign: Afterwards, to wit, *on Monday next after the Morrow of* All Souls, in this Term, the ſaid *T. B.* appeared before our Sovereign Lord the King at *Weſtminſter*, in his own Perſon, being brought to the Bar, under the Cuſtody of the Sheriff of the County aforeſaid, in Execution for the Debt and Damages aforeſaid, having been committed to the Marſhal, *&c.* and forthwith pleads, that he ought not to be detained in Priſon, in Execution for the Debt and Damages aforeſaid, becauſe that he ſaith, that, *&c.* [*ſo go on with the Subſtance of the Writ*] by reaſon whereof the ſaid *T. B.* was clearly diſcharged from the Debt and Damages aforeſaid; and prays, that he may be deliver'd and diſcharg'd out of the Priſon aforeſaid, in which he is now detain'd for the Debt and Damages aforeſaid; and becauſe this Court of our ſaid Sovereign Lord the King here know not whether the Allegation of him the ſaid *T. B.* be true or no, the Sheriff is commanded, that by honeſt Men, *&c.* he make it known to the aforeſaid *W. A.* and *L. S.* that they be before our Lord the King, *in Eight Days of St.* Hillary, *whereſoever*, *&c.* to ſhew, if they have or know

The Gravamen.

The Prayer of the Writ.

The King's Command.

The Allegation to verify the Writ.

A Scire Facias, why the Plaintiff ſhould not be diſcharged.

of

of any Thing to ſay for themſelves, why the ſaid *T. B.* ought not to be diſcharg'd from the Debt and Damages aforeſaid, and releaſed out of the Priſon aforeſaid, in which he is detained on that Occaſion, if, &c. And further, &c. The ſame Day is given to the aforeſaid *T. B.* in the Cuſtody of the Marſhal, &c. And thereupon *A. B.* and *C. D.* *(the Bail)* perſonally come here [*and ſo recite the Recognizance*] At which Day the ſaid *T. R.* comes here in Perſon, before our Sovereign Lord the King at *Weſtminſter*, and the Sheriff returns, that he, by Virtue of the Writ aforeſaid to him directed for that Purpoſe, hath made it known to the ſaid *W. A.* and *L. S.* that they were to be before our ſaid Sovereign Lord the King, at the Time mentioned in the aforeſaid Writ, by *J. Denne* and *R. Fenne*, honeſt Men, &c. as he was commanded to do by the ſaid Writ; and the aforeſaid *H. A.* and *L.* being ſo warned, &c. on the 4th Day of the Plea being ſolemnly called, appear by *Edward Webb* their Attorney; and thereupon pray a Day of Imparlance, and it is granted unto them, &c. And a Day therefore is given to the Parties aforeſaid to appear before our ſaid Sovereign Lord the King, *in fifteen Days from the Day of* Eaſter, *whereſoever*, &c. That is to ſay, to the ſaid *W. A.* and *L.* to imparl, and then to anſwer, &c. At which Day, as well the ſaid *T. R.* in his own Perſon, as the aforeſaid *W. A.* and *L.* by their Attorney aforeſaid, come before our Sovereign Lord the King at *Weſtminſter* aforeſaid; and the aforeſaid *W. A.* and *L.* pray a further Day of Imparlance thereto, and it is granted unto them, &c. And thereupon a further Day is given to the Parties aforeſaid, to be before our Sovereign Lord the King, *to the Morrow of the* Holy Trinity, *from thence next enſuing, whereſoever*, &c. that is to ſay, &c. [*as before*] At which ſaid Morrow of the *Holy Trinity*, as well the ſaid *T. B.* in his own Perſon, as the aforeſaid *W. A.* and *L.* by their Attorney aforeſaid, come before our Sovereign Lord the King at *Weſtminſter*; and the aforeſaid *W. A.* and *L. S.* plead, that

The Bail enter into a Recognizance.

The Defendants appear to the Scire Facias.

Imparlance.

that they, by any Thing before alledged by the aforeſaid *T. B.* ought not to be diſcharged from the Execution aforeſaid; becauſe they ſay, that the aforeſaid Sir *Jermyn Davers* did not permit the ſaid *T. B.* to eſcape and go at large in ſuch Manner and Form as the ſaid *T. B.* hath above alledged; and thereof they put themſelves upon the Country; and the ſaid *T. B.* does likewiſe the ſame: Therefore let a Jury come before our Sovereign Lord the King *in eight Days of St.* Hillary, *whereſoever*, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. The ſame Day is given to the Parties aforeſaid, &c. from which Day the ſaid Jury between the Parties aforeſaid, were reſpited before our Sovereign Lord the King at *Weſtminſter*, until *in fifteen Days from the Day of* Eaſter, thence next enſuing, for want of Jurors, &c. At which Day before our Sovereign Lord the King at *Weſtminſter*, as well the aforeſaid *T. B.* in his proper Perſon, as the aforeſaid *W. A.* and *L. S.* by their Attorney aforeſaid, come before our Sovereign Lord the King at *Weſtminſter*; and the Jurors being called in like Manner appear, who being elected, tried, and ſworn to give their Verdict upon the Premiſſes, ſay, upon their Oaths, that the aforeſaid *T. B.* was taken and arreſted in Execution for the Debt and Damages aforeſaid, as in the Record aforeſaid above is alledged: And that the ſaid Sir *Jermyn Davers*, Bailiff of the Liberty and Franchiſe aforeſaid, in the County of *S.* aforeſaid, did bring the ſaid *T. B.* to *Weſtminſter* in the County of *Middleſex*, on *Monday* before the Return of the Writ of *Capias ad Satisfaciendum* in the Record aforeſaid above mentioned, the Day of the Return of the aforeſaid *Capias ad Satisfaciendum* being *on Monday next after the Morrow of* All Souls, in the 5th Year of the Reign of his preſent Majeſty; and that before the Return thereof, the ſaid Bailiff of the Liberty and Franchiſe aforeſaid, at the Requeſt of him the ſaid *T. B.* carried him to the Village of *Lambeth* in the County of *Surry*, which Village of *Lambeth* is a Village near adjoin-

Their Plea.

The Award of a Venire.

The Continuance of the Jury.

Their Special Verdict.

adjoining to *Weſtminſter* aforeſaid, but out of, and not in the Way from the County of *Suffolk* aforeſaid, unto *Weſtminſter* aforeſaid, nor is it between the County of *S.* aforeſaid and *Weſtminſter* aforeſaid; and that the ſaid Bailiff of the Liberty and Franchiſe aforeſaid afterwards, at the ſaid Day of the Return of the ſaid Writ of *Capias ad Satisfaciendum*, did bring the ſaid *T. B.* to *Weſtminſter* aforeſaid, and delivered him the ſaid *T. B.* in the Court of our ſaid Sovereign Lord the King, before the King himſelf at *Weſtminſter* aforeſaid, to the Priſon of the ſaid Court of King's Bench, by Virtue or Colour of the ſaid Writ of *Capias ad Satisfaciendum*: And further the Jury ſay, that the ſaid *T. B.* from the Time of his being arreſted as aforeſaid, to the Return of the ſaid Writ of *Capias ad Satisfaciendum*, and the Delivery of the ſaid *T. B.* into his Majeſty's Court of King's Bench aforeſaid, remained and continued with the ſaid Bailiff by Virtue or Colour of the ſaid Writ or Warrant: But, whether upon the whole Matter aforeſaid, found in the Manner aforeſaid, the Bringing of the ſaid *T. B.* to *Lambeth* aforeſaid, *&c.* in ſuch Manner and Form as aforeſaid, be in Law an Eſcape out of Priſon, and a Permiſſion to go at large, or not, the ſaid Jury aforeſaid are altogether ignorant: Whereupon they pray the Advice and Diſcretion of this Court of our ſaid Sovereign Lord the King, before the King himſelf; and if it ſhall be thought by the ſaid Court of our ſaid Sovereign Lord the King, that the aforeſaid Bringing of the ſaid *T. B.* aforeſaid to *Lambeth* aforeſaid, in the Manner and Form aforeſaid, be in Law an Eſcape out of Priſon, and a Permiſſion to go at large, then the Jurors declare upon their ſaid Oath, that the ſaid Sir *Jermin Davers* did permit the ſaid *T. B.* aforeſaid to eſcape out of the Priſon aforeſaid, and to go at large at *Lambeth* aforeſaid, in the ſaid County of *Surry*, in ſuch Manner and Form as the ſaid *T. B.* hath above alledged; and if upon the whole Matter aforeſaid, it ſhall be thought by the Court of our ſaid Sovereign Lord

Lord the King, that the ſaid Bringing of him the ſaid *T. B.* to *Lambeth* aforeſaid, in the Manner and Form aforeſaid, is not in Law an Eſcape out of Priſon and a Permiſſion to go at large, then the ſaid Jurors do find upon their Oath aforeſaid, that the ſaid Sir *Jermin Davers* did not permit the ſame *T. B.* to eſcape out of Priſon, and to go at large, in ſuch Manner and Form as the ſaid *T. B.* hath above alledged, *&c.*

An **Audita Querela**, for Bail taken in Execution upon a Judgment obtained in the Court of the Sheriffs of London, after the Cauſe was removed by Hab. Corp. Theſ. Brev. 9.

(3.) **George**, *&c.* To the Mayor, Aldermen, and Sheriffs of the City of *London*, Greeting: It hath been ſhewn to us by the grievous Complaint of *R. K.* that whereas one *J.* on the 20th Day of *April* [*in ſuch a Year*] in our Court of our City of *London*, before *T. S.* then one of the Sheriffs aforeſaid, in the Compter of the ſame City, ſituate in the Pariſh of the Bleſſed Virgin *Mary* in the *Poultry*, *London*, had levied his Plaint, according to the Cuſtom of the ſaid City, in an Action of Treſpaſs upon the Caſe againſt *E. B.* and afterwards, to wit, on the 19th Day of *September* [*in ſuch a Year*] the ſaid *E. B.* was taken, arreſted, and carry'd to our Priſon in the ſaid Compter by *W. D.* Serjeant at Mace to the ſaid Sheriff, and was then and there held to Bail by *J. P.* and the ſaid *R. K.* according to the Cuſtom of the ſaid City, and afterwards, to wit, on the 31ſt Day of *October*, in the Year aboveſaid, We commanded you by our Writ, that you ſhould have the Body of the ſaid *E. B.* before our Truſty and Well-beloved *E. P.* one of our Juſtices of our Court before us, at his Chambers ſituate in *Serjeants-Inn* in *Chancery-Lane*, *London*, on the Day of *&c.* to do and receive, *&c.* and you the ſaid Sheriff, by Virtue of the ſaid Writ returned before the ſaid *E. P.* our ſaid Juſtice at the ſaid Day, the Cauſe of taking and detaining of him the ſaid *E. B.* and afterwards the ſaid *E. B.* gave good and ſufficient Bail before the ſaid *J. S.* to wit, *E. S.* and *T. B.* who undertook, and each of them undertook

Bail.

took for the ſaid *E. B.* that if it ſhould happen, &c. [*reciting the Recognizance*] And after the giving of the ſaid Bail before us, the ſaid *E. B.* was permitted to go at large: And afterwards, to wit, on the 12th Day of *November*, in the Year aboveſaid, the ſaid *J. B.* by Virtue of the ſaid Plaint in our Court, before you the ſaid Sheriffs of *London*, by the Judgment of the ſame Court, recovered 12 *l.* againſt the ſaid *E. B.* which were adjudged to the ſaid *J.* for his Damages, by reaſon of the ſaid Treſpaſs upon the Caſe, as the ſaid *R. K.* is ready to ſhew by ſuch ways and means as ſhall be thought proper; and now the ſaid *J.* contriving unduly to grieve the ſaid *R. K.* by means of the ſaid Recovery, hath ſued out Execution upon the ſaid Recovery before you the ſaid Sheriffs againſt him the ſaid *R. K.* and hath taken him on that Occaſion, and procured him to be detain'd by you the ſaid Sheriffs in our Priſon, under your Cuſtody, contrary to Right, to the great Damage and Grievance of him the ſaid *R.* and contrary to the Form and Effect of the Laws and Cuſtoms of this Kingdom of *England*: Wherefore the ſaid *R.* hath beſought us to provide him a proper Remedy in this Caſe: And becauſe we are unwilling that the ſaid *R.* be in any wiſe injured in this Caſe, and willing that what is juſt ſhould be done to him thereon, We command you, that you hear the Complaint of the ſaid *R.* and calling before you the ſaid Parties, and hearing their Reaſons, and inſpecting the Record of the ſaid Plaint remaining before you the ſaid Sheriffs, and diligently examining the ſame Parties concerning the Premiſſes, you cauſe full and ſpeedy Juſtice to be done to the ſaid *R.* as of Right, and according to the Law and Cuſtom of the ſaid City ought to be done. Witneſs ourſelf at *Weſtminſter*, the Day of in the Year of our Reign.

Permitted to go at large.

Judgment recover'd.

Prayer.

Audita Querela.

(4.) —— To our Juſtices aſſign'd to hold Pleas in our Court before us, *Greeting*: We are informed by the grievous Complaint of *J. L.* of, *&c.* that whereas *P. B.* Merchant, in our Court before us, at *Weſtminſter* by Bill, without our Writ, and by the Judgment of our ſame Court had recovered againſt him, as well a Debt of 20 *l.* as 10 *l.* which were adjudged to him the ſaid *P.* in our ſame Court before us at *Weſtminſter*, as well for his Damages occaſion'd by detaining of his ſaid Debt, as for his Expences and Coſts by him laid out about his Suit in that Cauſe, as by the Record thereof fully appears: And although the ſaid *J.* was upon the 20th Day of *May* in the Year by Virtue of our Writ of *Capias ad Satisfaciendum*, directed to our Sheriffs of *London*, taken and impriſon'd in Execution for the ſaid Debt and Damages, at the Suit of the ſaid *P.* in the Pariſh of *&c.* by *G. L.* Serjeant at Mace to *J. H.* one of the Sheriffs of the ſaid City, and afterwards, to wit, on the ſame 20th Day of *May*, to wit, at the Hour of Six in the Afternoon of the ſame Day, deliver'd by the ſaid *G. L.* to one *T. H.* in whoſe Houſe and Cuſtody the ſaid *J. L.* remained in Execution for the ſaid Debt and Damages from the ſaid Hour of Six, to the Hour of Eight of the ſame Evening; and that then the ſaid *J. L.* was permitted by the ſaid *G. L.* with the Conſent of the ſaid *P. B.* at to go at large, and was delivered from the ſaid Execution, as the ſaid *J. L.* is ready to prove by ſuch ways and means as the Court ſhall think proper: Nevertheleſs the ſaid *P.* hath lately ſued out Execution againſt the ſaid *J. K.* for his ſaid Debt and Damages, by reaſon of the ſaid Recovery, contrary to Right, and to the great Damage and Grievance of him the ſaid *J. K.* Wherefore the ſaid *J. L.* hath humbly beſought us to provide him a proper Remedy in this Caſe: And becauſe we would not ſuffer the ſaid *J. L.* to be injur'd in this Caſe, and willing that what is juſt ſhould be done thereon, **Do Command you**, that you hear the Complaint of

An **Audita Querela**, where the Defendant in the Judgment was taken in Execution, and ſuffered to go at large by the Plaintiff's Conſent, and Execution is afterwards ſued againſt him, directed to the Juſtices of the King's Bench. Theſ. Brev. 10.

of the ſaid *J. L.* in this Caſe, and that calling the ſaid Parties before you, and hearing their Reaſons you cauſe full and ſpeedy Juſtice to be done to the ſaid *J.* and what of Right, and according to the Laws and Cuſtoms of our ſaid Court ought to be done. Witneſs, *&c.*

A Declaration on an **Audita Querela**, where one of the Plaintiffs in the Original Action releaſed to the Defendant, after Judgment obtained.

Theſ. Brev. 13.

(5.) Our Sovereign Lord the King hath directed to his Right Truſty and well-beloved Sir *Matthew Hale*, Knt. and his Brethren his Majeſty's Juſtices aſſigned to hold Pleas in his ſaid Majeſty's Court before his Majeſty himſelf, his Writ cloſe in theſe Words: *Charles* by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* To our Truſty and well-beloved Sir *Matthew Hale*, Knt. and his Brethren our Juſtices aſſigned to hold Pleas in our Court before us, *Greeting:* We are informed by the grievous Complaint of *Edward Webb*, Doctor of Divinity, that whereas *P. B. T. H. J. F. J. K. Stephen Bartholomew*, and others [*naming them*] lately in our Court before us at *Weſtminſter*, to wit, in *Trinity Term* now laſt paſt, recovered againſt the ſaid *Edward Webb* 25 *l.* adjudged to them in our ſaid Court before us, according to the Form of the Statute in that Caſe made and provided for their Expences and Coſts by them ſuſtain'd about their Defences in an Action of Treſpaſs brought againſt them by him the ſaid *Edward Webb*; and although the ſaid *Stephen Bartholomew*, by the Name of, *&c.* after the ſaid Recovery, to wit, the 23d Day of *October*, in the 7th Year of our Reign at *Kingſclear* in our County of *Southampton* by his Deed of Releaſe, bearing Date the ſame Day and Year, ſhewn to us in our Court of *Chancery*, had remiſed, releaſed, and for ever quit-claimed to the ſaid *Edward*, by the Name of, *&c. all and all Manner of Action and Actions* [*and ſo on as in the Releaſe*] Nevertheleſs the ſaid *P. B. &c.* do unjuſtly proceed to the Execution of the ſaid Judgment, by reaſon of the ſaid Recovery, to the great Damage and Grievance of him the ſaid *Edward Webb*, and

Releaſe.

contrary to the Force, Form, and Effect of the ſaid Releaſe: Whereupon the ſaid *Edward* hath beſought us to provide him a proper Remedy in this Caſe; and becauſe we, willing the ſaid *Edward* be not injured in this Caſe, do command you, that ſeeing and underſtanding the ſaid Releaſe, and calling the Parties aforeſaid before you, and hearing their Reaſons, you cauſe further to be done in this Cauſe what of Right, and according to the Law and Cuſtom of this Kingdom of *England*, ought to be done. Witneſs ourſelf at *Weſtminſter* the 23d Day of *November*, in the 27th Year of our Reign; and thereupon the ſaid *Edward Webb* afterwards, to wit, on next after came here into Court by *Edmund Fifield*, his Attorney, and ſhew'd the ſaid Deed of Releaſe, mentioned in the ſaid Writ, to this his ſaid Majeſty's Court, which is dated the ſaid 23d Day of *October*, in the ſaid 27th Year of his ſaid Majeſty's Reign; and afterwards, to wit, on the ſame Day *R. S.* of, &c. and *R. F.* of, &c. perſonally came before his ſaid Majeſty at *Weſtminſter*, and became Bail for the ſaid *Edward Webb*, in 50 *l.* each, under a Condition, that the ſaid *Edward Webb* ſhould proſecute with Effect, until the ſaid Action ſhould be determin'd, and Judgment given thereon; and if it ſhould happen, that Judgment ſhould be given for the ſaid *P. B.* &c. in the ſaid Action, that then the ſaid *Edward* ſhould ſatisfy the ſaid 25 *l.* for the ſaid Expences and Coſts mentioned in the ſaid Writ, which ſaid 50 *l.* each of the ſaid Bail granted ſhould be made of their Lands and Chattels, and be levied to the Uſe of the ſaid *P. B.* &c. if it ſhould happen, that the ſaid *Edward Webb* ſhould make Default in the Premiſſes, and be thereof duly convicted; and becauſe it was convenient and neceſſary, that the ſaid *P. B.* &c. ſhould be ſummoned in reſpect of their Intereſt in this Caſe, before this Court further proceeds to diſcharge the Execution of the ſaid Judgment; Therefore the ſaid Sheriff of *Southampton* is commanded, that he Cauſe the ſaid *P. B.* &c.

Releaſe ſhewn to the Court.

Recogniſance.

to come before his ſaid Majeſty at *Weſtminſter* on *Monday next after the Octaves of St.* Hillary, to give an Anſwer to and concerning the Premiſſes; and that the ſaid Sheriff do at his Peril forbear executing any Writ of Execution whatſoever, that by reaſon of the ſaid Judgment ſhall be directed to him, and from taking and arreſting him the ſaid *Edward*, or any way moleſting him by reaſon of the ſaid Premiſſes, *&c.* the ſame Day was given to the ſaid *Edward Webb* to be there, *&c.* Before which Day, to wit, on the Day of in the 27th Year of his ſaid Majeſty's Reign, the ſaid *P. B.* died at *Kingsclear* aforeſaid in the County aforeſaid, and the ſaid *T. H. &c.* ſurvived him; and as well the ſaid *Edward Webb* by his ſaid Attorney, as the ſaid *T. H. &c.* by *J. L.* their Attorney, at the ſame Day, came before his Majeſty at *Weſtminſter*: And the ſaid *Edward Webb* declares, that the ſaid *P. B. &c.* lately in his ſaid Majeſty's Court before his Majeſty himſelf, to wit, in *Trinity Term* now laſt paſt (the ſame Court being then held at *Weſtminſter* in the County of *Middleſex*) recovered againſt him the ſaid *Edward Webb* 26 *l.* adjudged to them by his ſaid Majeſty's Court before his Majeſty himſelf, according to the Form of the Statute in that Caſe made and provided, for their Expences and Coſts by them ſuſtain'd about their Defence in the ſaid Action of Treſpaſs brought againſt them by him the ſaid *Edward Webb*; and although the ſaid *Stephen Bartholomew*, by the Name of, *&c.* after the ſaid Recovery, to wit, on the ſaid 23d Day of *October*, in the ſaid 27th Year of the Reign of his ſaid Majeſty at *Kingsclear* aforeſaid, in the County of *Southampton* aforeſaid, by his ſaid Deed of Releaſe ſealed with the Seal of him the ſaid *Stephen*, and now here ſhewn to this Court, which is dated the Day and Year laſt above mentioned, remiſed, releaſed, and for ever quit-claimed to the ſaid *Edward*, by the Name of, *&c. All and all Manner of Action and Actions*, &c. [*to the End of the Releaſe*] Nevertheleſs the ſaid *P. B. &c.* have contrary to Right proceed-

Superſedeas.

Death of one of the Defendants.

The Parties come before the Court.

Count.

Judgment recovered.

Releaſe.

proceeded to the Execution of the ſaid Judgment, by reaſon of the ſaid Recovery againſt him the ſaid *Edward Webb*, and the ſaid *T. H. &c.* ſince the Death of the ſaid *P. B.* do proſecute Execution on the ſaid Judgment againſt him the ſaid *Edward*, contrary to Right, to the great Damage and Grievance of him the ſaid *Edward*, and contrary to the Force, Form, and Effect of the ſaid Releaſe: And this the ſaid *Edward* is ready to verify; and therefore he prays Judgment, and that he may be diſcharged of every Execution of of the ſaid Judgment, *&c.*

Bail.

(1.) *England*, to wit, THE **Sheriff was Commanded**, That he ſhould take *A. B.* late of, *&c.* if, *&c.* and ſafely keep him, *&c.* ſo that he ſhould have his Body here at this Day, to wit, [*on ſuch a Day and Year*] to anſwer to *C. D.* of a Plea [or *in an Action*] that he render to him 20 *l.* which he owes to him, and unjuſtly detains *&c.* And now here at this Day came as well the ſaid *C.* by his Attorney, as the ſaid *A.* in his own proper Perſon, taken by the ſaid Sheriff, and brought to the Bar by Virtue of the ſaid Writ; and thereupon came here into Court in their proper Perſons *E. F.* late of, *&c.* and *G. H.* late of, *&c.* and acknowledged themſelves, and each of them acknowledged himſelf to owe to the ſaid *C.* the Sum of 20 *l.* of lawful Money of *Great Britain*; which ſaid Sum of 20 *l.* the ſaid *E.* and *G.* agreed, for themſelves and their Heirs, and the Hirs of each of them, ſhould be made of their Lands and Chattels, and be levied to the Uſe and Behoof of the ſaid *C.* And the ſaid *A.* likewiſe perſonally preſent in Court acknowledged himſelf to owe to the ſaid *C.* the

An Entry of **Special Bail** in Debt, where the Defendant was brought to the Bar of the Court. Off. Brev. 19.

Sum of 40 *l.* of lawful Money of *Great Britain*; which ſaid Sum of 40 *l.* the ſaid *A.* granted and agreed, for himſelf and his Heirs, ſhould be made of his Lands and Chattels, and be levied to the Uſe and Behoof of the ſaid *C.* and his Executors; **under this Condition**, nevertheleſs, that if it ſhould happen, Judgment ſhould be given in this Court in the ſaid Action, for the ſaid *C.* againſt the ſaid *A.* that then the ſaid *A.* ſhould ſatisfy the ſaid Debt, and alſo all the Damages to the ſaid *C.* by reaſon of detaining the ſaid Debt, to be adjudged againſt the ſaid *A.* in this Court; or ſhould render his Body in this Court, in Execution of the ſaid Judgment, *&c.*

Note, *That if Bail is taken in* London *(to wit, in either of the Serjeants Inns) a Writ of* Sci Fa' *may be iſſued there againſt the Bail; otherwiſe in the Place where the Record lies, and not elſewhere.*

An Entry of Bail upon a Hab. Corp. Off. Brev. 19.

(2.) *England*, to wit, **The Sheriff was Commanded**, That he ſhould have the Body of *R. C.* late of *L.* in his County, Yeoman, otherwiſe called, *&c.* [*as in the Bond*] before the Juſtices of our Sovereign Lord the King here at this Day, (to wit) [*ſuch a Day and Year*] whom, *&c.* as, *&c.* to anſwer to *J. R.* in an Action, that he render to him 100 *l.* which he owes, and unjuſtly detains from him, *&c.* and now here (to wit) on the 23d Day of *January*, in this ſame Term, came in their proper Perſons, as well the ſaid *J.* by *J. H.* his Attorney, as *T. G.* of *T.* in the County of *S.* Gent. and *C. G.* late of *L.* in the ſaid County of *S.* Gent. the ſaid *R.*'s Bail, and acknowledged themſelves, and each of them acknowledged himſelf to owe to the ſaid *J.* 200 *l.* of lawful Money of *Great Britain*; which ſaid Sum of 200 *l.* they the ſaid *T.* and *C.* for themſelves and their Heirs, agreed and granted ſhould be made of the Lands and Chattels of them, and each of them, and be levied to the Uſe and Behoof of the ſaid *J.* and his Executors; **under this Condition**, nevertheleſs,

leſs, that if it ſhould happen that Judgment ſhould be given in this Court in the ſaid Action, for the ſaid *J.* againſt the ſaid *R. C.* that then the ſaid *R.* ſhould ſatisfy the ſaid Debt to the ſaid *J.* and alſo all the Damages occaſioned by means of detaining the ſaid Debt, to be recovered and adjudged againſt him the ſaid *R.* in this Court; or ſhould render his Body in this Court in Execution of the ſaid Judgment, *&c.*

An Entry of Special Bail in Withernam. Mich. 7. Car. 1. Roll. 269, Off. Brev. 19.

(3.) *England*, to wit, The Sheriff was commanded, that whereas *S. R.* Gent. was ſummon'd to be in the Court of our Sovereign Lord the King here (to wit) at *Weſtminſter*, to anſwer to *L. B.* of a Plea, wherefore he took the Cattle of him the ſaid *L.* and unjuſtly detained them againſt Sureties and Pledges; the ſaid *L.* afterwards made Default in this Court: Wherefore it was conſidered [or *adjudged*] in this Court, that he and his Pledges for proſecuting ſhould be amerced, and the ſaid *S.* ſhould depart the Court for ever [or *without a Day*] and that he ſhould have a Return of the ſaid Cattle, by reaſon whereof the King had commanded the ſaid Sheriff, that he ſhould make a Return of the ſaid Cattle to the ſaid *S.* without Delay, and ſhould not deliver them at the Complaint of the ſaid *L.* without his Majeſty's ſaid Writ, which ſhould make expreſs Mention of the ſaid Judgment, and in what Manner, *&c.* the ſaid Sheriff ſhould make appear here on *the Morrow of the* Holy Trinity *laſt paſt*; and the ſaid Sheriff returned to his ſaid Majeſty's Juſtices here at that Day, that before his Receipt of the ſaid Writ to him directed, the ſaid Cattle were eloined by the ſaid *L.* to Places unknown to the ſaid Sheriff; ſo that he could not make a Return of the ſaid Cattle to the ſaid *S.* as he was commanded by the ſaid Writ; by reaſon whereof the King had commanded the ſaid Sheriff, that he ſhould take of other Cattle of the ſaid *L.* to the Value of the ſaid Cattle firſt taken in *Withernam*, and ſhould deliver them to the ſaid *S.* to be detained by him, until he

could make a Return of the Cattle firſt taken; and that he ſhould compel the ſaid *L.* by Sureties and Pledges to be here at this Day, to wit, on the Octaves of St. *Martin*, to anſwer as well to our Sovereign Lord the King, for his Contempt, as to the ſaid *S.* for the Damages and Injuries brought upon him in that Behalf: At which Day came here, as well the ſaid *L.* by *J. P.* his Attorney, and the Sheriff, to wit, *J. T.* Knight and Baronet, now returns, that he, by Virtue of the ſaid Writ to him directed, hath taken in *Withernam*, one Mare of the Cattle of the ſaid *L.* and hath delivered the Mare to the ſaid *S.* to be detained by him until the Cattle firſt taken ſhould be returned to the ſaid *S.* and that the ſaid *L.* was attached by Pledges, to wit, *John Doe* and *Richard Roe*; and thereupon the ſaid *L.* prays to ſubmit to a Fine, and he is admitted thereto accordingly, and is fined 3 *s.* 4 *d.* by the Juſtices of this Court, which he the ſaid *L.* hath by Order of this Court paid to *J. P.* Gent. one of the Philizers of this Court, for the neceſſary Repairs made and to be made in the ſame Court; therefore the ſaid *L.* is thereof acquitted, *&c.* whereupon the ſaid *L.* hath found new Pledges in this Court, as well to proſecute his Claim, as to return the Cattle of the ſaid *S.* firſt taken, or pay the Value of them, if a Return of them ſhould be adjudged, to wit, *N. C.* of *R.* in the County of *C.* Gent. under the Penalty of 16 *l.* which the ſaid *N.* granted ſhould be made of his Lands and Chattels, and be levied to the Uſe of the ſaid *S.* if it ſhould happen, that the ſaid *L.* ſhould not deliver the ſaid Cattle firſt taken, or ſhould not ſatisfy the Value thereof to the ſaid *S.* in Caſe a Return thereof ſhall be adjudged; and thereupon the ſaid Sheriff is commanded to cauſe the ſaid Mare taken in *Withernam* to be delivered to the ſaid *L.* and that the ſaid Sheriff make it known to us in what Manner, *&c.* from the Day of St. *Michael*, in one Month, *&c.* and compel the ſaid *S.* by good and ſufficient Sureties and Pledges, to be in this Court at the ſame Time

to

to anſwer to the ſaid *L.* for the taking of the Cattle firſt taken. The ſame Day is given as well to the ſaid *L.* as the ſaid *S.* to be here, *&c.*

Bill of Exceptions.

After ſetting forth the Record of Niſi Prius, *and the Verdict together with the Judgment, you go on thus :*

The Form of a Bill of Exceptions.

(1.) AFterwards (to wit) on *Monday* next after the *Octaves of the Purification of the Bleſſed Virgin *Mary*, this ſame Term, came the ſaid *S. T.* [*the Party on whoſe Behalf the Bill of Exceptions is ſealed*] before our Sovereign Lord the King at *Weſtminſter*, by *R. G.* his Attorney, and ſaith, that in his Majeſty's Court of Common Pleas at *Weſtminſter* aforeſaid, at the Trial of the Iſſue aforeſaid, certain Exceptions were taken and made by the Counſel learned in the Law of the ſaid *S.* to a certain Matter then given in Evidence on the Behalf of the ſaid *J.* in the Action aforeſaid; and thoſe Exceptions were then and there written in a Bill, and the ſaid *G. T.* Chief Juſtice of the ſaid Court of Common Pleas, *E. N.* Knt. *J. P.* Knt. and *J. B.* Knt. his Brethren Juſtices of the ſaid Court of Common Pleas, ſet their reſpective Seals to the Bill of Exceptions aforeſaid, according to the Form of the Statute in ſuch Caſe made and provided; and the ſaid *L.* brings into this Court the Bill of Exceptions aforeſaid, with the Seals of the ſaid Juſtices thereto affixed, and the ſaid *Samuel* prays his Majeſty's Writ to be directed to the ſaid Chief Juſtice of the Court of Common Pleas, to direct the ſaid Chief Juſtice and his ſaid Brethren, that they be before our ſaid Sovereign Lord the King, whereſoever, *&c.* and it is granted him; by which the ſaid *G. T.* Knt. Chief Juſtice aforeſaid, and *E. N.* Knt. *J. P.*

* The Day of the Return of the Writ of Error.

That the Judges ſealed the Bill.

Profert of the Bill.

An Award of a Writ to ſummon the Judges of the Common Pleas, to own or deny their Seals.

Knt. and *J. B.* Knt. his Brethren, Juſtices of the ſaid Court of Common Pleas, are directed, that they be before our ſaid Sovereign Lord the King in three Weeks from *Eaſter-Day*, whereſoever, *&c.* to acknowledge or deny their Seals, which are by them affixed to the ſaid Bill of Exceptions (as it is before alledged by the ſaid *Samuel*) bringing with them the ſame Writ: The ſame Day is given to the ſaid *S. &c.* at which Day the ſaid *S.* came before our ſaid Sovereign Lord the King at *Weſtminſter* aforeſaid, by his Attorney; and the ſaid *G. T.* Knt. Chief Juſtice aforeſaid, and his Brethren Juſtices of the ſaid Court of Common Pleas, came in their proper Perſons [or *perſonally came*] and acknowledged their Seals to be by them affixed to the ſaid Bill of Exceptions, as aforeſaid; which Bill of Exceptions follows in theſe Words ——— Be it remembered, that whereas heretofore, to wit, in *Eaſter Term*, in the 11th Year of the Reign of his ſaid preſent Majeſty, in his Majeſty's ſaid Court of Common Pleas, before the Juſtices of that Court at *Weſtminſter* in the County of *Middleſex*, *J. S.* Gentleman had impleaded one *S.* Gentleman, in an Action of Treſpaſs upon the Caſe, and had declared, that whereas [*ſo go on with the Proceedings, ending with the Verdict; then go on*] and at the Trial of the ſaid Iſſue joined as aforeſaid, the ſaid *J. S.* by his Counſel learned in the Law, for the Maintenance and Proof of the ſaid Iſſue on the Part of the ſaid *S.* then and there gave in Evidence, and proved before the ſaid Juſtices and the Jury [*ſo go on with the Matter that was proved, and to which the Exceptions are applied*] and thereupon the Counſel of the ſaid *S.* on his Behalf interpoſed, admitted, and agreed, that the ſaid *S.* had had and received the Fees and Profits of the ſaid Office to the Value aforeſaid, but objected and inſiſted, that, *&c.* [*ſo go on with the Matter of the Exceptions*] and pray'd the ſaid Juſtices of the Court of Common Pleas aforeſaid, that they would direct and declare to the ſaid Jury, that the ſaid Record, and the Matters therein contained

The Return.

The Continuance.

The Bill of Exceptions.

The Proceedings in the Cauſe.

The Matter proved, to which the Defendant's Counſel objected.

The Manner of their Objection.

tain'd, were not ſufficient in Law to prove (*what the Counſel for the Party filing his Bill of Exceptions had objected, and inſiſted was not Evidence*) Nevertheleſs the ſaid Juſtices aſſerted, and informed the ſaid Jury, *that the Record* aforeſaid, and the Matters therein contained were ſufficient in Law to prove, that he the ſaid *J. had done ſo and ſo, as the Subject Matter of the Evidence was*; and thereupon the ſaid Jury gave their Verdict for the ſaid *J. S.* the Plaintiff againſt the ſaid *S. D.* Wherefore, and inaſmuch as the Record, and the Matter aforeſaid offered by way of Exception, as aforeſaid, on the Part of the ſaid *S.* would not have appeared by the Record of the Verdict of the ſaid Jurors, he the ſaid *S.* by his Counſel, requeſted the Juſtices of the ſaid Court, according to the Form of the Statute in ſuch Caſe made and provided, to ſeal this preſent Bill, containing therein the Matter offered by way of Exception on the Behalf of the ſaid *S.* as aforeſaid; for which Reaſon the ſaid Juſtices at the Requeſt of the ſaid *S.* have the ſame Day of the Trial of the Iſſue aforeſaid (ſitting the Court) ſealed this Bill. *G. T. E. N. J. P. J. B.*

N. Wright, for the Plaintiff.
E. Lutwyche, for the Defendant.

That the Matter proved was not good Evidence.

The Judges Direction to the Jury.

The Prayer of the Bill.

The Bill ſealed according to the Prayer.

(2.) *After the Award of the* Venire, *and the Words*, the ſame Day is given to the Parties aforeſaid, *you ſay thus:* Which ſaid Iſſue, *if there happens to be but one*; *if ſeveral, then thus:* Which ſaid ſeveral Iſſues reſpectively joined between the ſaid Parties, in the Manner aforeſaid, afterwards, to wit, at the Aſſizes held at the Caſtle of *C.* in the County aforeſaid, before *W. Montague*, Chief Baron of his Majeſty's Court of Exchequer, and Sir *Hugh Wyndham*, Knt. one of his Majeſty's Juſtices of his Court of Common Pleas, the Juſtices appointed to hold the Aſſizes for the County aforeſaid, according to the Form of the Statute, &c. on *Tueſday* the 14th Day of *March* [*in ſuch a Year*] came on to Trial; at which Day as well the ſaid (*Plaintiff*) in his own Perſon, as the

A Bill of Exceptions, where the Trial was at the Aſſizes upon a Record, iſſuing out of the King's Bench. Bro. Red. 130, 131.

That it came on to Trial.

the ſaid *(Defendant)* by his Attorney aforeſaid, came before the ſaid Juſtices, and the Jurors of the Jury impanelled and ſummoned to try the Iſſue aforeſaid likewiſe came, and were ſworn upon the Jury to try the Iſſue [or *the ſeveral Iſſues reſpectively*] join'd between the ſaid Parties, in the Manner aforeſaid; and upon the Trial had in the Manner aforeſaid, in Maintenance of [or *to prove*] the ſaid Iſſue *laſt above joined* [*if that happened to be the Caſe*] he the ſaid *S.* gave in Evidence to the ſaid Jury ſo impanelled and ſworn, that, *&c.* [*ſetting forth the Nature of the Evidence*] and thereupon the Counſel on the Part of [*the Perſon againſt whom the Evidence was given*] did interpoſe and inſiſt, that thoſe Matters that were given in Evidence to the ſaid Jury, as aforeſaid, were not ſufficient in Law to maintain [or *to prove*] the ſaid Iſſue on the Part of the ſaid [*Perſon in whoſe Favour the Evidence was given*] and for that reaſon they pray'd the ſaid Judge, that the Matter might be ſpecially found: Nevertheleſs the ſaid Judge declared his Opinion, that the Matters aforeſaid thus given in Evidence to the ſaid Jury, as aforeſaid, were ſufficient in Law to maintain the ſaid Iſſue on the Part of the ſaid *S.* if the Jury ſhould believe and find, that the ſaid [*the Party on whoſe Part the Evidence was given*] had believed and were ſatisfied of the Truth of the Matters aforeſaid ſo given in Evidence to them, as aforeſaid; and thereupon the ſaid Juſtices directed and ſubmitted the Conſideration thereof to the ſaid Jury, according to their Opinion, as aforeſaid: Whereupon the Counſel on the Part of the ſaid *J. T. T. C. &c.* conceived, that by the Law of the Land, the Matters aforeſaid ſo given in Evidence to the ſaid Jury, on the Part of the ſaid *S.* as aforeſaid, were not ſufficient to maintain the ſaid Iſſue for the ſaid *S.* (although the ſaid Jury did believe upon that Evidence, that the ſaid *J. T. T. T. &c.* had for themſelves believed, or were ſatisfy'd of the Truth of the Evidence; therefore they ſubmitted their Exception to the ſaid Juſtices, and pray'd, that the ſaid Juſtices would

The Jury ſworn.

The Matter given in Evidence.

would ſet their Hands and Seals to this Bill, according to the Form of the Statute in ſuch Caſe made and provided; and thereupon the ſaid *H. W.* ſet his Hand and Seal thereto according to the Form of the Statue aforeſaid. Dated at the Caſtle of *Cambridge* on the 14th Day of *March*, in the thirty-fourth Year of the Reign of his preſent Majeſty.

Hugh Wyndham.

The Entry of Bill of Middleſex, on the Roll to ſave the Statute of Limitations. Lilly's Entries 103.

(3.) *Middleſex*, to wit, The Sheriff is commanded, that he take *C. B.* and *J. D.* if, &c. and them ſafely keep, &c. ſo that he may have their Bodies before her ſaid Majeſty at *Weſtminſter*, on *Wedneſday* next after three Weeks from the *Holy Trinity*, to anſwer to *R. C.* of a Plea of Treſpaſs, and alſo the Bill of him the ſaid *R.* againſt the ſaid *C.* for 10 *l.* upon Promiſe, to be exhibited according to the Cuſtom of her ſaid Majeſty's Court before her Majeſty herſelf; and that he ſhould have there, at the ſame Time, this Precept.

per Bill. *Ventris.*

At which Day the ſaid *R.* perſonally came before her ſaid Majeſty at *Weſtminſter*, and offered himſelf againſt the ſaid *C.* in the ſaid Plea, and the Sheriff of *Middleſex*, to wit, Sir *O. B.* Knt. and Sir *E. W.* Knt. returned, that the ſaid *C.* is not to be found in his Bailiwick.

Capias

Capias ad Satisfaciendum.

K. B.

A Capias ad Satisfaciendum in Debt.

(1.) GEORGE the Second, by the Grace of God of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, &c. To the Sheriff of *Suffolk*, Greeting: We command you, that you take *C. D.* * and ſafely keep him, ſo that you have his Body before us at *Weſtminſter*, on † *Wedneſday next after three Weeks of St.* Michael, to ‡ make Satisfaction to *A. B.*

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* If the Proceedings are by Original, then you'll remember to give the Defendant his Addition.

† And in that Caſe the Return muſt alſo be general, as in the Common Pleas, *viz. in three Weeks from the Day of St.* Michael.

‡ If it be in Caſe upon Promiſes, you ſay, *to make Satisfaction for* 50 l. *for his Damages, which he hath ſuſtained, as well by reaſon of the Non-Performance of a Promiſe and Undertaking* [*or* ſeveral Promiſes and Undertakings, as the Declaration is] *lately made to the ſaid* A. *by the ſaid* C. *as for his Expences and Coſts laid out by him about his Suit in this Cauſe, whereof the ſaid* C. *is convicted.* —— If it be in Treſpaſs on the Caſe generally for Wrongs, then you ſay thus; *To make Satisfaction to* A. B. *for* 20 l. *for his Damages, which he hath ſuſtained, as well by reaſon of a Treſpaſs upon the Caſe committed againſt the ſaid* A. *by him the ſaid* C. *as for his Expences*, &c. [as in the former] —— If in Treſpaſs and Aſſault then thus —— As in the former to the Words, *which he hath ſuſtained*; then you go on, *as well by reaſon of a Treſpaſs and Aſſault, lately committed by the ſaid* C. *upon him the ſaid* A. *as for his Expences and Coſts*, &c. —— If in Treſpaſs only, then you ſay, *as well by reaſon of a Treſpaſs* [*or* Treſpaſſes, if more than one in the Declaration] *committed by the ſaid* C. *againſt him*

A. B. for a Debt of 50 *l.* which the ſaid *A. B.* lately recovered againſt him in our Court before us; and alſo 6 *l.* which in our ſaid Court were adjudged to the ſaid *A. B.* for his Damages, which he had ſuſtained, as well by reaſon of detaining the ſaid Debt, as for his Expences and Coſts laid out by him about his Suit in this Cauſe, whereof the ſaid *C.* is convicted, as it appears to us of Record, and have you there at the ſame Time this Writ. Witneſs *Philip* Lord *Hardwick* at *Weſtminſter*, the 23d Day of *June* in the 8th Year of our Reign.

Ventris.

A Ca' Sa' in the proper County, and a Non eſt Inventus returned, and a Teſtat' Ca' Sa' awarded into a foreign County.

(2.) George the Second, *&c.* To the Sheriffs of *London*, Greeting: Whereas we commanded the Sheriff of *Suffolk*, that he ſhould take *H. P.* if he was to be found in his Bailiwick, and ſafely keep him, ſo that he might have his Body before us at *Weſtminſter*, [*the Day of the Return*] to make Satisfaction to *J. C.* for 27 *l.* 4 *s.* which were adjudged to the ſaid *John* for his Damages, which he ſuſtained by reaſon of not performing certain Promiſes and Undertakings made to the ſaid *John*, by the ſaid *H.* at *Ipſwich* in the County aforeſaid, whereof he is convicted; and at the Day of that Return, came the ſaid Sheriff of *Suffolk*, and returned, that he was not to be found in his Bailiwick: Whereupon it is teſtify'd in our ſame Court before us, on the Behalf of the ſaid *John*, that the ſaid *Henry* doth lurk, and wander up and down in *London*; therefore we command you, that you take the ſaid *Henry*, if

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him the ſaid A. *as for his Expences and Coſts*, &c. —— If in Covenant, *as well by reaſon of a Breach of Covenant* [*or* Breaches of Covenant, as the Caſe is] *lately made between them the ſaid* A. *and* C. ——— If in Ejectment, *as well by reaſon of a Treſpaſs and Ejectment* [*or* Treſpaſſes and Ejectments, as the Caſe is] *lately committed by the ſaid* C. *againſt him the ſaid* A. *as for his Expences and Coſts*, &c.

he

he ſhall be found in your Bailiwick, and ſafely keep him, ſo that ye have his Body here [*the Day of the Return*] to make Satisfaction to the ſaid *John* for his Damages aforeſaid, in the Manner aforeſaid. **Witneſs, &c.**

A Teſtatum Ca' Sa' in Debt, upon a Judgment, and a Sci' Fa' having iſſued thereon.

(3.) **George** the Second, *&c.* To the Sheriff of *Suffolk*, Greeting: Whereas we lately commanded our Sheriffs of *London*, that they ſhould take *C. D.* if he ſhould have been found in his Bailiwick, and ſafely keep him, ſo that they might have his Body before us at *Weſtminſter*, at a certain Day now paſt, to make Satisfaction to *A. B.* for a Debt of 300*l.* which the ſaid *A.* in our Court before us at *Weſtminſter*, had lately recovered againſt him, and alſo for 40 *s.* which in our ſame Court before us at *Weſtminſter* were adjudged to the ſaid *A.* for his Damages, which he had ſuſtained, as well by reaſon of detaining his Debt, as for his Expences and Coſts laid out by him about his Suit in that Caſe, whereof he is convicted, as it appears to us of Record: * *And whereupon in our ſame Court before us at* Weſtminſter *it is adjudged, that the ſaid* A. *have his Execution againſt the ſaid* C. *for the Debt and Damages aforeſaid by the Default of the ſaid* C. and our ſaid Sheriffs of *London*, at that Day returned to us, that the ſaid *C.* is not to be found in his Bailiwick: Whereupon on the Part of the ſaid *A.* it is ſufficiently teſtify'd in our Court before us, that the ſaid *C.* lurks and wanders about in your County; therefore we command you, that you take him, ſo that you have his Body before us at *Weſtminſter* [*the Return*]

Sci' Fa'.

Teſtatum.

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* Note; *A* Common Teſtatum Ca' Sa' *differs not from this above, but in leaving out thoſe Words in* Italick *after the* Aſterisk; *and it may be perceived the uſual Form of a* Teſtatum Ca' Sa' *in the* King's Bench *differs ſomewhat from the* Common Pleas, *inaſmuch as in the former they recite the firſt Writ; whereas in the latter they only mention it at the End, that there had been a Return to a former Writ.*

to make Satisfaction to the ſaid *A.* for the Debt and Damages aforeſaid: And have you then there, *&c.* Lilly 546.

(4.) *As in the former Writ, to the Words,* which the ſaid *(Plaintiff)* lately in our Court before us at *Weſtminſter*, recovered againſt him and one *C. D.* (which ſaid *C. D.* afterwards died) for his Damages, which he hath ſuſtained, as well by reaſon of a certain Treſpaſs lately committed againſt the ſaid *(Plaintiff)* by the ſaid *Defendant)* and the ſaid *C. D.* now deceaſed, as for his Expences and Coſts laid out by him about his Suit in this Cauſe, whereof they are convicted, *&c.* as it appears to us of Record; and whereupon in our ſame Court before us at *Weſtminſter*, after the Deceaſe of the ſaid *C. D.* it was conſidered, that the ſaid *(Plaintiff)* might have his Execution againſt the ſaid *(Defendant)* for the Damages, Expences, and Coſts aforeſaid, by the Default of the ſaid Defendant: And have you then there this Writ. Witneſs, *&c.*

A Ca' Sa' againſt a Surviving Defendant in an Action of Treſpaſs. After a Sci' Fa'. The Death of one Defendant. The Sci' Fa'

(5.) ——— To make Satisfaction to *E. T.* Widow, and *J. B.* ſurviving Executors of the laſt Will and Teſtament of *S. D.* deceaſed, for 500 *l.* which they the ſaid *E.* and *J.* and one *S. G.* and *R. L.* now deceaſed, as Executors of the laſt Will and Teſtament of the ſaid *S. D.* likewiſe deceaſed, in the Court of our late beloved Father *George*, late King of this Kingdom of *Great Britain*, before the ſaid late King himſelf at *Weſtminſter*, recovered againſt the ſaid *A. B.* and alſo 6 *l.* 10 *s.* which in the ſame Court of his ſaid late Majeſty were adjudged to the ſaid *E. F. J. B. S. G.* and *R. L.* for their Damages, which they had ſuſtained, as well by reaſon of detaining their ſaid Debt, as for their Expences and Coſts laid out by them about their Suit in that Behalf, whereof the ſaid *A. B.* is convicted, as it appears to us of Record; and forasmuch as it hath been adjudged in our ſame Court before us at *Weſtminſter*, that the ſaid *E.* and *J.* might

A Ca' Sa' for ſurviving Executors, upon a Judgment recovered in the late Reign, and after a Sci' Fa', and Coſts taxed thereon. Lilly 54.

The Judgment on the Sci' Fa'. Coſts taxed thereon.

might have their Execution againſt the ſaid *A.* for the Debt and Damages aforeſaid; and alſo for 6 *l.* for their Expences and Coſts by our ſaid Court before us at *Weſtminſter*, according to the Form of the Statute in ſuch Caſe made and provided, adjudged to the ſaid *E.* and *I.* whereof the ſaid *A.* is likewiſe convicted, as it likewiſe appears to us of Record: And have you there at the ſame Time this Writ. Witneſs, *&c.*

A Ca' Sa' againſt Bail in an Action of Debt, upon a Judgment recovered upon a Recognizance in the Time of the late King, and revived by Sci' Fa' in the K. B.

(6.) ——— To make Satisfaction to *E. S.* for a Debt of 100 *l.* which the ſaid *E.* in the Court of our late beloved Father King *George* the Firſt, before the ſaid King himſelf recovered againſt the ſaid *S.* and alſo 31 *s.* which in the ſaid Court of the ſaid late King, were adjudged to the ſaid *E.* for his Damages, which he had ſuſtained as well by reaſon of detaining his Debt, as for his Expences and Coſts laid out by him about his Suit in that Behalf, whereof the ſaid *A.* and *C.* were convicted, as it appears to us of Record; and foraſmuch as it hath been adjudged in our Court before us, that the ſaid *E.* might have his Execution againſt the ſaid *A. B.* and *C. D.* for the Debt and Damages aforeſaid, according to the Force, Form, and Effect of a Recognizance, acknowledged by the ſaid *A.* and *C. D.* in his ſaid late Majeſty's Court before the ſaid late King himſelf for the ſaid *S.* at the Suit of the ſaid *E.* in the Action aforeſaid, *through the Default of the ſaid* A. B. *and* C. D. as it likewiſe appears to us of Record: And have you there at the ſame Time this Writ. Witneſs, *&c.*

Sci' Fa'. Lilly 547.

A Ca' Sa' in Debt, after a Sci' Fa' for an Executrix.

(7.) George the Second, *&c.* To the Sheriff of *Middleſex*, Greeting: We command you, that you take *J. T.* of *Norton* in the County of *Somerſet*, Eſq; otherwiſe called, *&c.* [*as in the Bond*] if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us at *Weſtminſter*, on *Monday next after three Weeks of St.* Michael, to make Satisfaction to *E. J.* Widow, Executrix of the laſt Will and Teſta-

ment of *H. E.* her late Husband deceaſed, for a Debt of 40 *l.* which the ſaid *H.* in the Court of his late Majeſty King *George* the Firſt, before the ſaid King himſelf at *Weſtminſter* aforeſaid, recovered, &c. [*as in the former*] as it appears to us of Record [*then go on*] and foraſmuch as it hath been adjudged in the ſaid Court of his ſaid late Majeſty, before the ſaid late King himſelf, that the ſaid *E.* might have her Execution againſt the ſaid *J.* for the Debt and Damages aforeſaid: And have you there, at the ſame Time, this Writ. **Witneſs**, &c.

(8.) ——— **We command you**, that you take *R. B.* and *E. S.* if they ſhall be found in your Bailiwick, and ſafely keep them, ſo that you have their Bodies before us, *in eight Days of St.* Hillary, *whereſoever we ſhall then be in* England, to make Satisfaction to *A. B.* for 100 *l.* according to the Form of a Recognizance acknowledged in our Court before us, by them the ſaid *R.* and *E.* upon our Writ of Error: Whereupon they, as Bail, in our Court before us are convicted, as it appears to us of Record: And foraſmuch as it hath been adjudged in our ſame Court before us, that the ſaid *A. B.* might have an Execution thereon: And have you there, at the ſame Time, this Writ. **Witneſs**, &c.

A Ca' Sa' againſt Bail in a Writ of Error upon the Recognizance, after a Sci' Fa'.

Han. 227.

(9.) **George**, &c. To the Sheriffs of *London*, Greeting: We command you, that ye take *E. S.* late of *London*, Widow, if ſhe ſhall be found in your Bailiwick, and ſafely keep her, ſo that ye have her Body before us, *from the Day of St.* Michael, *in three Weeks, whereſoever we ſhall then be in* England, to make Satisfaction to *S. E.* for 9 *l.* 10 *s.* which in our Court before us, according to the Form of the Statute in ſuch Caſe made and provided, were adjudged to the ſaid *Sarah*, for her Damages, Expences and Coſts, which ſhe had ſuſtained, by reaſon of delaying the Execution of a Judgment for 26 *l.* lately obtained by the ſaid *Sarah* againſt the ſaid *Elizabeth*,

A Ca' Sa' on a Judgment on a Sci' Fa', why Execution ſhould not go, &c. after a Writ of Error in the K. B.

beth, in our Court, before Sir *Robert Eyre*, Knt. and his Brethren our Juſtices of our Court of Common Pleas at *Weſtminſter*, by means of Suing out our Writ of Error by her the ſaid *Elizabeth*, of and upon the Premiſſes, as by inſpecting the Record and Proceedings aforeſaid of the aforeſaid Judgment, which we cauſed to be brought into our ſaid Court before us, with certain Cauſes of Error, it appeareth to us of Record; and inaſmuch as the ſaid *Elizabeth* afterwards, in our ſaid Court before us, hath not proſecuted her ſaid Writ of Error, as it likewiſe appears to us of Record: And have you there, at the ſame Time, this Writ. **Witneſs**, &c.

A **Capias ad Satisfaciendum** for Debt and Damages recovered in the Inferiour Court at Norwich, after the Record was remov'd by a Writ of Error into the **King's Bench**, and the Judgment there affirmed.

(10.) ——— To the Sheriffs of the City of *Norwich*, Greeting: **We command you**, that ye take *R. W.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that ye have his Body before us, *on the Octaves of St.* Martin, *wherefoever we ſhall then be in* England, to make Satisfaction to *J. E.* for 5 *l.* 7 *s.* 8 *d.* which the ſaid *J.* lately recovered againſt him in our Court of Record of the ſaid City of *Norwich*, before *J. W.* and *T. L.* late Sheriffs of the ſaid City, which in our ſame Court of the City aforeſaid, according to the Uſage and Cuſtom of the ſaid City, were adjudged to the ſaid *J.* for his Damages, which he ſuſtained, as well by reaſon of detaining the Debt, as for his Expences and Coſts laid out by him about his Suit in this Cauſe, whereof he is convicted, as it appears to us by inſpecting the Record and Proceſs thereon, which we cauſed to be brought before us, by reaſon of Errors alledged to have been therein: And foraſmuch as it hath been adjudged in our Court before us, that he might have an Execution thereupon: And have you there, at the ſame Time, this Writ. **Witneſs**, *&c.* [*The like with a* Teſtatum *thereon upon a Judgment in the Court of* Windſor, *affirmed in the* King's Bench, *upon a Writ of Error.*] (11.)

1 Mo. Intr. 222.
Han. 228.

(11.) ——— To the Sheriff of *Wiltſhire*, Greeting: **We Command you**, that you take *M. E.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us *in one Month of St.* Michael, *wherefoever we ſhall then be in* England, to make Reſtitution and Satisfaction to *F. G.* for a Debt of 3 *l.* and alſo for 10 *s.* which the ſaid *M.* at the City of *New Sarum* in your County, before the Bailiffs of the ſaid City, by the Judgment of the Court of that City, without our Writ, according to the Cuſtom of that Court, recovered againſt the ſaid *F.* for his Damages, which he had ſuſtained, as well by reaſon of detaining the Debt, as for his Expences and Coſts laid out by him about his Suit in that Cauſe, whereof he was convicted, as it appears to us of Record, by inſpecting the Record and Proceſs thereon, which we lately cauſed to be brought before us, in order to correct the Errors therein, and we, by reaſon of the Errors found in the Record and Proceſs aforeſaid, have reverſed and annulled the ſaid Judgment, and ordered, that all Things whatſoever, which the ſaid *F.* hath been deprived of, by means of that Judgment, be reſtored to him; and the ſaid *M.* having had his Execution of the Debt and Damages aforeſaid, by reaſon of the Judgment aforeſaid given in our ſaid Court of the City aforeſaid, and is now poſſeſſed of the ſaid 3 *l.* 10 *s.* Wherefore it was adjudged in our ſame Court before us, that the ſaid *F.* ſhould have Reſtitution thereof: And have you there, at the ſame Time, this Writ. **Witneſs**, &c.

A **Capias ad Satisfaciendum** for a Reſtitution of a Debt and Damages, which the Plaintiff in an Action in an **Inferiour Court** had recovered and levied, inaſmuch as that Judgment was **reverſed** in the **King's Bench**.

Setting forth the Judgment below.

The Removal by Writ of Error.

The Reverſal.

And Reſtitution awarded. Han. 233.

(12.) **George** the Second, *&c.* To the Sheriff of *Norfolk*, Greeting: We command you, that you take *W. P.* [*of ſuch a Place*] in your County, Gentleman, *(otherwiſe called)*

A **Ca' Sa'** on a Judgment in the Common Pleas, removed by Writ of Error into the King's Bench, and there affirmed.

led) [*as in the Bond, if it be upon a Bond, and there be an* alias dictus] if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us, *in fifteen Days from* Eaſter-day, *whereſoever we ſhall then be in* England, to make Satisfaction to *P. H.* Eſq; for a Debt of 300 *l.* and alſo for 70 *s.* which were adjudged to the ſaid *P.* in our Court of Common Pleas at *Weſtminſter*, before our Juſtices of that Court, for his Damages which he had ſuſtained, as well by reaſon of detaining that Debt, as for his Expences and Coſts laid out by him about his Suit in that Cauſe, whereof he is convicted, as by inſpecting the Record and Proceedings thereof (which we have cauſed to be brought before us with certain Cauſes of Error) it appears to us of Record; and alſo for 8 *l.* which were adjudged in our Court before us, to the ſaid *P.* according to the Form of the Statute in that Caſe made and provided, for his Damages, Expences and Coſts, which he ſuſtained by reaſon of delaying the Execution of the ſaid Judgment, by means of the ſaid *William*'s ſuing out our Writ of Error, of and upon the Premiſſes, unjuſtly proſecuted in our Court before us, whereof the ſaid *W.* is likewiſe convicted: And foraſmuch as it hath been adjudged in our ſame Court before us, that the ſaid *P.* might have his Execution thereof: And have you there, at the ſame Time, this Writ. Witneſs, &c.

Clift 839.

K. B.

A Ca' Sa' for a Debt and Damages after a Non Pros' in the Exchequer.

(13.) George the Second, &c. [*as in the former till you come to the Return, then thus*] To make Satisfaction to *N. W.* for a Debt of 400 *l.* which the ſaid *N.* recovered againſt him in our Court before us at *Weſtminſter*, and alſo for 5 *l.* for his Damages, which he ſuſtained, as well by reaſon of detaining that Debt, as for his Expences and Coſts laid out by him about his Suit in this Cauſe, whereof he is convicted, as it appears to us of Record; and alſo for 60 *s.* which were adjudged

judged in our Court of Exchequer Chamber, before our Juſtices of the Common Pleas, and Barons of our Exchequer of the Degree of the Coif, according to the Form of the Statute in ſuch Caſe made and provided, to the ſaid *N.* for his Damages, Expences and Coſts, which he hath been at, by means of delaying the Execution aforeſaid, by reaſon of the ſaid *D.*'s ſuing out our Writ * for correcting Errors of and upon the Judgment aforeſaid; inaſmuch as the ſaid *D.* did not afterwards proſecute the ſaid Writ in our ſaid Court of Exchequer Chamber, as by the Record and Proceſs thereof tranſmitted into our Court before us, from our ſaid Court of Exchequer Chamber it likewiſe appears to us of Record: And have you there, at the ſame Time, this Writ. Witneſs, &c.

* Or rather, our Writ of Error.

Theſ. Brev. 42.

(14.) ——— To make Satisfaction to *R. L.* for 5 *l.* 5 *s.* for his Damages, which he ſuſtained, as well by reaſon of not performing certain Promiſes and Undertakings made to the ſaid *R.* by the ſaid *T.* as for his Expences and Coſts laid out by him about his Suit in this Particular, whereof he is convicted, as it appears to us of Record, and alſo for 5 *l.* adjudged to the ſaid *R.* according to the Form of the Statute in ſuch Caſe made and provided, for his Damages, Expences and Coſts, which he had ſuſtained by delaying the Execution of the Judgment aforeſaid, by reaſon of ſuing out our Writ for correcting Errors in our Excequer Chamber at *Weſtminſter*, before our Juſtices of the Common Pleas and Barons of the Exchequer of the Degree of the Coif; whereupon the ſaid Judgment in the ſame Court was afterwards affirmed, as by the Record and Proceſs thereof tranſmitted into our Court before us, from our ſaid Court of Exchequer Chamber, it likewiſe appears to us of Record: And have you there, at the ſame Time, this Writ. Witneſs, &c.

A Ca' Sa' upon a Judgment had in the King's Bench, and then removed to and affirmed in the Exchequer Chamber.

Theſ. Brev. 42.

A Capias ad Satisfaciendum upon a Judgment had in the King's Bench, and then removed into the Exchequer Chamber, and there affirmed, and afterwards affirmed in Parliament.

(15.) George the Second, &c. We command you, that you take *Thomas Smith*, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us, *from the Day of St.* Michael, *in three Weeks, whereſoever we ſhall then be in* England, to make Satisfaction to *E. P.* Eſq; as well for a Debt of 500 *l.* which the ſaid *Edward* in our Court before us, at *Weſtminſter*, lately recovered againſt him, and alſo for 20 *l.* and 2 *d.* for his Damages, which he had ſuſtained, as well occaſioned by detaining the ſaid Debt, as for his Expences and Coſts laid out by him about his Suit in that Particular [or *that Cauſe*] whereof the ſaid *Thomas* is convicted, as it appears to us of Record, and alſo for 9 *l.* which in our Exchequer Chamber before our Juſtices of the Common Pleas [or *Bench*] and the Barons of our Exchequer of the Degree of the Coif there, according to the Form of the Statute in that Caſe lately made and provided, were adjudged to the ſaid *Edward* for his Damages, Expences and Coſts, which he had ſuſtained by reaſon of delaying the Execution of the Judgment aforeſaid, by means of proſecuting our Writ of Error ſued out by the ſaid *Thomas*: Whereupon the Judgment was afterwards affirmed in the ſame Court, and whereof the ſaid *Thomas* is convicted, as by inſpecting the Record and Proceedings thereof tranſmitted from the ſaid Court of Exchequer aforeſaid, into our Court before us, according to the Form of the Statute aforeſaid, and in our ſame Court before us, in all Things affirmed, it appears to us of Record; and alſo for 90 *l.* which in our Court of Parliament, according to the Form of the Statute in ſuch Caſe made and provided, were adjudged to the ſaid *E.* for his Damages, Expences and Coſts, which he had ſuſtained by reaſon of delaying the Execution of the Judgment aforeſaid, by means of Suing out our Writ of Error by him the ſaid *T.* of and concerning the Judgment

ment aforeſaid in our ſaid Court of Parliament; and which, by the ſaid Court of Parliament, is in all Things affirmed, as likewiſe by inſpecting the Record and Proceedings thereof tranſmitted from our ſaid Court of Parliament into our Court before us, it likewiſe appears to us of Record: And have you there, at the ſame Time, this Writ. **Witneſs**, &c.

A **Capias ad Satisfaciendum** upon a Judgment in an **Inferiour Court**, removed into the Court of **King's Bench**, by a Writ of Error there non-pros'd, and a **Teſtatum** thereon directed to the Sheriff of **Berks** upon a Return of a **Non eſt Invent'**, &c. by the Sheriff of **Devon**.

(16.) **George** the Second, *&c.* To the Sheriff of *Berks*, Greeting: Whereas we lately commanded our Sheriff of *Devon*, that he ſhould take *W. D.* late of *B.* in the County of *Devon*, Miller, if he could have been found in his Bailiwick, and ſafely keep him, ſo that he might have his Body before us, *on the Octaves of St.* Hillary, *wherefoever*, *&c.* to make Satisfaction to *T. L.* of *C.* Inn-holder, as well for a Debt of 10 *l.* as for [*ſo much*] for his Expences and Coſts laid out by him about his Suit in that Caſe, whereof he is convicted in our Court before *J. B.* Mayor of our Town of *Windſor*, *W. H.* and *R. D.* the Bailiffs there *H. A.* *R. C.* and *A. B.* Burgeſſes of the ſame Town, as by inſpecting the Record and Proceſs thereof (which we cauſed to be brought before us with certain Cauſes of Error) it appears to us of Record; and foraſmuch as it hath been adjudged in our ſame Court before us, that the ſaid *T.* might have his Execution againſt him thereon, for the Debt and Damages aforeſaid, and our ſaid Sheriff of *D.* at that Day returned to us, that the ſaid *W.* was not to be be found in his Bailiwick: Whereupon on the Part of the ſaid *T.* it is ſufficiently teſtified in our ſame Court before us, that the ſaid *W.* lurks and wanders up and down in your County: Therefore we command you, that you take, *&c.* [*as in the former*].

A Ca' Sa' upon quaſhing a Writ of Error, according to the Statute of the 4 & 5 Q. Anne.

(17.) George the Second, &c.——To make Satisfaction to *A. B* for 6 *l.* adjudged to him by this Court, according to the Form of the Statute in ſuch Caſe made and provided, for his Damages, Expences and Coſts, which he had ſuſtained by reaſon of delaying his Execution upon an Adjudication of an Execution upon a Recognizance againſt the ſaid *C. D.* lately acknowledged to the ſaid *A.* before our Juſtices of the Court of Common Pleas, by reaſon of ſuing out a faulty and defective Writ of Error, in that Cauſe lately done by the ſaid *C. D.* and (which into our Court before us we lately cauſed to be brought) as it appears to us of Record: And foraſmuch as it was adjudged in our ſame Court before us, that the ſaid *A. B.* might have an Execution againſt the ſaid *C. D.* for the ſaid 6 *l.* according to the Statute aforeſaid, notwithſtanding our Writ of *Superſedeas* lately directed to him to the contrary: And have you there, at the ſame Time, this Writ. Witneſs, &c.

Lilly 541.

A Capias ad Satisfaciendum, at the Suit of a Husband and Wife, upon a Judgment recovered by her as Executrix, upon a Promiſe made to her former Husband, and the Judgment revived by her and her Husband by Scire Facias.

(18.) George the Second, &c. To the Sheriff of *Middleſex*, Greeting: Whereas *Elizabeth Grove*, Widow, Executrix of the laſt Will and Teſtament of *John Grove*, her late Huſband deceaſed, in the Court of our dearly beloved Father *George*, late King of *Great Britain*, &c. before the ſaid late King himſelf at *Weſtminſter*, by the Judgment of the ſame Court, recovered againſt *Joſeph Gyles* 43 *l.* 9 *s.* 9 *d.* for his Damages, which he had ſuſtained, as well by reaſon of not performing certain Promiſes and Undertakings made to the ſaid *John* in his Lifetime by the ſaid *Joſeph*, as alſo for her Expences and Coſts laid out by the ſaid *Elizabeth* about her Suit in that Behalf, whereof the ſaid *Joſeph* is convicted, as it appears to us of Record; and the ſaid *Elizabeth*, after the Judgment was given, as aforeſaid, married one *William Reeves*: And foraſmuch

aſmuch as it was adjudged in our Court before us at *Weſtminſter*, that the ſaid *W.* and *E.* might have their Execution againſt the ſaid *Joſeph*, for the Damages aforeſaid, according to the Force, Form and Effect of the ſaid Recovery, as it likewiſe appears to us of Record: And thereupon, by our Writ, we commanded the Sheriffs of *London*, that they ſhould take the aforeſaid *Joſeph*, if he could be found in their Bailiwick, and ſafely keep him, ſo that they might have his Body before us at *Weſtminſter*, at a particular Day mentioned in the ſame Writ, to make Satisfaction to the ſaid *W.* and *Elizabeth* for the Damages aforeſaid; and our ſaid Sheriffs of *London* at that Day returned to us, that the aforeſaid *Joſeph* was not to be found in their Bailiwick: Whereupon, on the Part of the ſaid *W.* and *Elizabeth*, it is ſufficiently teſtified in our Court before us, that the aforeſaid *Joſeph* lurks and wanders up and down in your County; therefore we command you, that you take him, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us at *Weſtminſter* on *Thurſday* next after fifteen Days of St. *Martin*, to make Satisfaction to the ſaid *W.* and *E.* for the Damages aforeſaid: And have you there, at the ſame Time, this Writ. Witneſs, &c.

A Ca' Sa' for an Adminiſtratrix, for the Reſidue, in Caſe, where a Fi' Fa' had iſſued to the Sheriffs of London.

(19.) George the Second, *&c.* To the Sheriff of *Suffolk*, Greeting: Whereas we have, by our Writ, commanded you, that of the Goods and Chattels of *T. A.* Eſq; in your Bailiwick, you ſhould cauſe to be made 500 *l.* which *E. S.* Widow, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights and Credits, which were of *F. G.* her late Husband deceaſed, in our Court before us at *Weſtminſter*, lately recovered againſt him for her Damages, which ſhe had ſuſtained, as well by reaſon of not performing ſeveral Promiſes and Undertakings lately made by the ſaid *Thomas* to the ſaid *E.* as Adminiſtratrix to the ſaid *F.* as alſo for her Expences and Coſts laid out by her about her Suit in that Behalf, whereof the

the ſaid *T.* is convicted, as appears to us of Record; and that he ſhould have thoſe Monies before us at *Weſtminſter*, at a particular Day now paſt, to be rendered to the ſaid *E.* for her Damages and Coſts aforeſaid (our Writ of Error, and Writ of *Superſedeas* ſued out thereon in any wiſe notwithſtanding) and you at the Day aforeſaid returned to us, that the ſaid *T.* had no Goods or Chattels in your Bailiwick, whereof you could cauſe to be made [or *levied*] the Damages, Expences and Coſts aforeſaid, or any Part thereof: Whereupon, on the Part of the ſaid *E.* it was ſufficiently teſtified in our Court before us at *Weſtminſter*, that the ſaid *T.* had Goods and Chattels ſufficient in the County of *Middleſex*, whereof the ſaid Sheriff of *Middleſex* might have cauſed to be made the Damages, Expences and Coſts aforeſaid; whereupon we commanded the Sheriff of *Middleſex*, that of the Goods and Chattels of the ſaid *T.* in his Bailiwick, he ſhould cauſe to be made the ſaid 500 *l.* for the Damages, Expences and Coſts aforeſaid; and that he ſhould have thoſe Monies before us at *Weſtminſter*, on [*ſuch a Return*] to be rendered to the ſaid *E.* for her Damages, Expences and Coſts aforeſaid (our Writ of Error, and Writ of *Superſedeas* ſued out, in any wiſe notwithſtanding) and our ſaid Sheriff of *Middleſex* at that Day, returned to us, that in order to have an Execution of that Writ to him directed, he had commanded the Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of St. *Peter*, *Weſtminſter*, who hath the entire Execution of all Warrants, Writs, and Mandates directed to him, which Bailiff *(to wit)* *R. K.* Eſq; made this *Return*, That of the Goods and Chattels of the ſaid *T.* he had cauſed to be made 200 *l.* Part of the Damages aforeſaid, which Monies he had ready before us at the Day and Place aforeſaid, as he was commanded by the ſaid Writ, to be rendered to the ſaid *E.* in Part of Satisfaction of the Damages aforeſaid; and further certified, that the ſaid *T.* had no other or more Goods or Chattels in his Baili-

Notwithſtanding Writs of Error and Superſedeas. And a **Nulla Bona** returned.

Upon that a **Teſtatum Fieri Facias** to the Sheriff of Middleſex,

And a Return of a Mandavi Ballivo to the Bailiff of Weſtminſter.

And a Return by him, that he had levied 200 l. Part of the Damages.

Lilly 548.

Bailiwick, whereof he could cauſe to be made the Reſidue of the ſaid Damages, or any Part thereof; therefore we command you, that you take the ſaid *T.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us at *Weſtminſter* [*ſuch a Return*] to make Satisfaction to the ſaid *E.* for 300 *l.* Reſidue of the Damages aforeſaid: And have you then there this Writ. Witneſs, &c.

A **Capias ad Satisfaciendum** againſt an Executor where the Sheriff upon two **Fieri Facias's** returned **nulla bona** of their own; and thereupon an Inquiſition was taken, and a **Devaſtavit** found; whereupon iſſued a **Scire Facias**, to ſhew Cauſe why the Plaintiff ſhould not have Execution of their own Goods; and a **Nulla bona** returned, and thereupon the Award of a **Ca' Sa'** for the **Coſts.**

(20.) Geo. the Second, &c. To the Sheriff of *Yorkſhire*, Greeting: Whereas we lately commanded our Sheriffs of *London*, that of the Goods and Chattels, which were of *Thomas Wood* late of *Gray's Inn*, at the Time of his Death, in the Hands of *W. D.* Eſq; and *Anne* his Wife, Executrix of the Laſt Will and Teſtament of the ſaid *Thomas*, they ſhould cauſe to be levied a Debt of 50 *l.* and alſo 21 *s.* which in our Court were awarded to *Thomas Pole*, for his Damages, which he had ſuſtained, as well by reaſon of detaining his Debt, as for his Expences and Coſts laid out by him about his Suit in that Cauſe, as it appears to us of Record, if the ſaid *William* and *Anne* had ſo much of the Goods of the ſaid *Thomas Wood* in their Hands; and if they had not, then that they ſhould cauſe the Damages aforeſaid to be levied of the proper Goods and Chattels of the ſaid *W.* and *A.* and that they ſhould have thoſe Monies before us at *Weſtminſter*, on *Friday* next after the Octaves of the Purification of the Bleſſed Virgin *Mary*, to be rendered to the ſaid *T. P.* for the Debt and Damages aforeſaid, recovered in the Manner aforeſaid; and that they ſhould likewiſe have there that Writ: And whereupon our Sheriffs of *London*, at that Day, made a Return, that the ſaid *W.* and *A.* had not any Goods or Chattels which were of the ſaid *Thomas Wood*, at the Time of his Death, in

in their Hands, in his Bailiwick, whereof they could cauſe the ſaid Debt and Damages, or any Part thereof to be levied; and that they had not any Goods or Chattels of their own in his Bailiwick, whereof they could cauſe the ſaid Damages, or any Part thereof, to be levied: We therefore then commanded you, as before we had commanded you, that of the Goods and Chattels, which were of the ſaid *T. W.* at the Time of his Death, in the Hands of the ſaid *W.* and *A.* in your Bailiwick, you ſhould cauſe to be levied, as well the ſaid 50 *l.* as the ſaid 60 *s.* if the ſaid *W.* and *A.* had ſo much of the Goods and Chattels of the ſaid *A.* in their Hands; and if not, that you ſhould then cauſe to be levied the Damages aforeſaid, of the proper Goods and Chattels of the ſaid *W.* and *A.* and that you ſhould have thoſe Monies before us, on *Saturday next after the Octaves of the Purification of the Bleſſed Virgin* Mary laſt paſt, to be rendered to the ſaid *T. P.* for the ſaid Debt and Damages; and that you ſhould have the ſaid Writ there at the ſame Time; And you returned to us at *Weſtminſter*, at that Day, that the ſaid *W.* and *A.* had not any Goods or Chattels, that were of the ſaid *T. W.* at the Time of his Death, in their Hands, in your Bailiwick, whereof you could levy the ſaid Debt and Damages, or any Part thereof; nor had they any Goods or Chattels of their own in your Bailiwick, whereof you could levy the ſaid Damages, or any Part thereof; and becauſe the ſaid Return is found to have been made in Delay of the ſaid Execution, and it is teſtified in our ſame Court before us, on the Part of the ſaid *T. J.* that the ſaid *W.* and *A.* have ſold divers Goods and Chattels, that were of the ſaid *T. W.* at the Time of his Death in their Hands, to be adminiſtered, and have converted and diſpoſed of the Money from thence ariſing to their own Uſe; and that the Reſidue of the ſaid Goods and Chattels, that were of the ſaid *W.* at the Time of his Death in the Hands of the ſaid *W.* and *A.* to be adminiſtered, are eloined by them the ſaid *W.* and *A.* with an Intent to avoid

the

the levying of the ſame, on the ſaid Execution: And becauſe we are unwilling, that thoſe Things which are rightly done in our Court ſhould be fruſtrated by Art, Deceit, or Contrivance, we command you, that of the Goods and Chattels, which were of the ſaid *T. W.* at the Time of his Death, in the Hands of them the ſaid *W.* and *A.* to be adminiſtered in your Bailiwick, you levy the ſaid Debt of 50 *l.* if you can levy it thereof; and have you thoſe Monies levied thereof before us at *Weſtminſter*, on *Tueſday next after the Morrow of* All Souls, to be rendered to the ſaid *T. P.* for his ſaid Debt and Damages; and if it can't be levied thereon, then by the Oaths of honeſt and lawful Men of your Bailiwick, to be taken for that Purpoſe, do you diligently inquire, whether the ſaid *W.* and *A.* or either of them, have ſold, eloined, or converted, and diſpoſed of to their own Uſe, Goods and Chattels, which were the ſaid *T. W.*'s at the Time of his Death in their Hands, to be adminiſtered, to the Value of the ſaid Debt, or any Part thereof, and if by the Inquiſition taken thereon, it ſhall appear to you, that the ſaid *W.* and *A.* have, or either of them hath ſold, eloined, or converted, and diſpoſed of the Goods and Chattels, which were of the ſaid *T. W.* at the Time of his Death, in their Hands to be adminiſtered, to the Value of the Debt aforeſaid, or any Part thereof, then by honeſt and lawful Men in your Bailiwick, do you make it known to the ſaid *W.* and *A.* that they be before us at *Weſtminſter*, at the ſame Day, to ſhew if they have or know of any Thing to ſay for themſelves, why the ſaid *W. P.* ſhould not have an Execution againſt them for the Debt and Damages aforeſaid, to be levied of the proper Goods and Chattels of the ſaid *W.* and *A.* if they ſhall ſee it expedient for them ſo to do; and the Inquiſition, which you ſhall take thereon, do you return [or *cauſe to be brought*] before us at *Weſtminſter*, on *Tueſday next after the Morrow of* All Souls, under your Seal and the Seals of thoſe by whoſe Oath you ſhall take ſuch Inquiſition;

ſition: We alſo command you, that you take the ſaid *W.* and *A.* if they ſhall be found in your Bailiwick, and ſafely keep them, ſo that you have their Bodies before us at *Weſtminſter* at the Time aforeſaid, to make Satisfaction to the ſaid *T. P.* for the ſaid 21 *l.* for the Damages aforeſaid, recovered in the Manner aforeſaid: And have you there, as well the Names of thoſe Perſons by whoſe Oath you ſhall take ſuch Inquiſition, as of thoſe by whom you ſhall ſo cauſe it to be known; and this Writ. Witneſs, &c.

The Entry of a Ca' Sa' upon the Roll in the King's Bench.

(21.) *England*, ſſ. Our Sovereign Lord hath ſent to the Sheriffs of *Suffolk*, his Writ Cloſe, in theſe Words: ſſ. *George*, &c. [*reciting the Writ, and then you enter the Return thus*] At which Day the ſaid *(Plaintiff)* came before our Sovereign Lord the King at *Weſtminſter*, in his own Perſon; and the Sheriff of the ſaid County of *Suffolk* (to wit) *J. M.* Baronet, returned [or *made a Return*] that the ſaid *(Defendant)* is not found in his Bailiwick.

Note; *In the Common Pleas, the Entry of a* Ca'Sa' *differs from that in the King's Bench, for in the former, they don't recite the Writ in* hæc Verba, *but only the Subſtance of the Writ thus:*

The Entry of a Ca' Sa', for the Reſidue, where Part had been levied by a Fi' Fa'. The Writ.

(22.) *Norfolk*, ſſ. The Sheriff was commanded, that of the Goods and Chattels of *A. B.* late of [*ſuch a Place*] in the County of *Norfolk*, Gentleman, in his Bailiwick, he ſhould cauſe to be made, as well a Debt of 40 *l.* which *C. D.* here in his Majeſty's Court of Common Pleas, had recovered againſt him, as 40 *s.* which in this Court were adjudged to the ſaid *C.* for his Damages, which he had ſuſtained by reaſon of detaining his Debt; and that he ſhould have thoſe Monies here at this Day (to wit) on the Octaves of the Purification of the Bleſſed Virgin *Mary*, to be rendered to the ſaid *C.* for his Debt and Damages aforeſaid, whereof he is convicted; and now here at this Day came the ſaid *C.* by *J. N.* his

his Attorney, and the Sheriff now returns, that he, by Virtue of that Writ to him directed, hath cauſed to be made of the Goods and Chattels of the ſaid *A.* 23 *l.* 10 *s.* 11 *d.* towards the Debt and Damages aforeſaid; and that the ſaid *A.* had not any Goods or Chattels in his Bailiwick, whereof he could have levied [or *cauſed to be made*] the Reſidue of the ſaid Debt and Damages, or any Part thereof; therefore the Sheriff is commanded, that he take the ſaid *A. B.* if, *&c.* and ſafely keep him, *&c.* ſo that he may have his Body here in fifteen Days of *Eaſter-Day*, to make Satisfaction to the ſaid *C.* for 18 *l.* 9 *s.* 1 *d.* Reſidue of the ſaid Debt and Damages; at which Day came here the ſaid *C.* by his ſaid Attorney, and the Sheriff had done nothing therein, nor returned the Writ; therefore be there made another Writ (as before) directed to him in the Manner aforeſaid, returnable here on the Morrow of the *Holy Trinity*, *&c.* at which Day comes here the ſaid *C. D.* by his ſaid Attorney, and the ſaid Sheriff hath done nothing therein, nor returned the Writ therein; therefore let there be made another Writ to him in the Manner aforeſaid, returnable here in three Weeks, from the Day of St. *Michael*, *&c.* at which Day comes here the ſaid *C. D.* by his Attorney aforeſaid, and the Sheriff hath done nothing therein, nor returned the Writ therein; therefore let there be made another Writ to him in the Manner aforeſaid, returnable here on the Octaves of St. *Hillary* [*and ſo go on with as many Continuances as are neceſſary*]. Clift 852. Hill. 8. W. 3. Rol. 581.

Capias

Capias ad Satisfaciendum.

C. B.

A Ca' Sa' generally for Wrongs.

(1.) GEORGE the Second, by the Grace of God of *Great Britain*, *France* and *Ireland* King, Defender of the Faith, &c. To the Sheriff of *Norfolk*, Greeting: We command you, that you take *A. B.* late of *E.* in your County, Yeoman, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before our Juſtices at *Weſtminſter*, *in* * *three Weeks from the Day of St.* Michael, to make Satisfaction to *C. D.* for 50 *l.* which, in our Court before our Juſtices at *Weſtminſter*, were adjudged to the ſaid *C.* for his Damages, which he had ſuſtained † by reaſon of a Treſpaſs upon the Caſe, committed by the ſaid *A.* againſt him

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* If the Execution be for or againſt an **Attorney**, or other **Officers** of the Court by Bill, then the Return, as in the King's Bench, ——— *on Friday next after three Weeks of St.* Michael.

† If it be upon **Promiſſes**, then thus: *by reaſon of the Non-Performance of a Promiſe*, (*or* Promiſes) *made by the ſaid* A. *to him the ſaid* C. *at* E. *in your County, whereof he is convicted* ——— If in **Treſpaſs** and **Aſſault** then thus: *by reaſon of a Treſpaſs and Aſſault* (*or* Treſpaſſes and Aſſaults, *as the Caſe is*) *with Force and Arms, and againſt our Peace committed by the ſaid* A. *upon the ſaid* C. *at* F. *in your County, whereof he is convicted*, &c. ——— If in **Treſpaſs** and **Ejectment**: *by reaſon of a Treſpaſs and Ejectment* (*or* Treſpaſſes and Ejectments, *as the Caſe is*) *with Force and Arms, and againſt our Peace committed by the ſaid* A. *againſt him the ſaid* C. *at* F. *in your County.* ——— If in **Covenant**, thus: *by reaſon of a Breach of Covenant*, (*or* Breaches of Covenant, *as the Caſe is*) *made between them, according to the Force, Form and Effect of Indentures* (*or* Articles) *made between them, whereof he is convicted*, &c.

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the ſaid *C.* at *F.* in your County, whereof he is convicted: And have you there this Writ. Witneſs Sir *Robert Eyre*, Knt. the 23d Day of *June* in the 8th Year of our Reign.

(2.) ——— We Command you, That you take *A. B.* of [*ſuch a Place*] Yeoman, and *C. D.* of [*ſuch a Place*] Carpenter, if they ſhall be found in your Bailiwick, ſo that you have their Bodies before our Juſtices at *Weſtminſter*, *on the Morrow of the* Holy Trinity, (to wit) the ſaid *A.* to make Satisfaction to the ſaid *T.* for 20 *l.* and the ſaid *C.* to make Satisfaction to the ſaid *E.* for 10 *l.* for the ſeveral Damages, which the ſaid *E.* ſuſtained, by reaſon of an Aſſault, Beating, Wounding and ill Treatment committed upon the ſaid *E.* by them the ſaid *A.* and *C.* with Force and Arms, and againſt our Peace, at *B.* in your County, as it is found by an Inquiſition of the Country of your County taken thereon; and alſo the ſaid *A.* and *C.* to make Satisfaction to the ſaid *C.* for 10 *l.* which in our ſame Court were adjudged to the ſaid *E.* for his Expences and Coſts, which he had ſuſtained, by reaſon of the Premiſſes whereof they are convicted: And have you there, *&c.*

If your Ca' Sa' be againſt ſeveral in Treſpaſs, where the Damages upon the Inquiry are found ſeverally, you make your Writ out in this Form.

A Capias ad Satisfaciendum, *after a* Scire Facias *ſued out, to revive a Judgment either* after *the* Year *and* Day, *or for that the Party ſuing out the* Scire Facias *is intitled to Execution by his repreſenting the Plaintiff in the Judgment*, is thus:

After theſe Words of the Ca' Sa', **whereof he is convicted,** *if it be a* Ca' Sa' *out of the* Common Pleas; *and after theſe Words of the* Ca' Sa', **whereof he is convicted, as it appears to us of Record,** *if it be a* Ca' Sa' *out of the* King's Bench, *you go on thus:*

And foraſmuch as it hath been adjudged in our ſame Court, that the ſaid [*the Party ſuing out the* Scire Facias] might have an Execution againſt the ſaid [*Defendant*] for the Debt and Damages aforeſaid, by the Default of the ſaid *(Defendant)*: And have you there this Writ. Witneſs, &c.

If the Scire Facias *was brought againſt* Husband *and* Wife *upon a Judgment had againſt the* Wife when Sole, (*you ſay*) to make Satisfaction to *(the Plaintiff)* for a Debt of 10 *l.* which the ſaid *(Plaintiff)* lately recovered in our Court before us, againſt the ſaid *(the Wife)* whilſt ſhe was Sole, &c. *And then after the Word*, Convicted, *you ſay*, And the ſaid *(the Wife)* after that the ſaid Judgment was given, married the ſaid *(the Husband)*; and whereupon it was adjudged in our ſame Court, that the ſaid *(the Plaintiff)* may have an Execution againſt the ſaid *(the Husband and Wife)* for the Debt and Damages aforeſaid by the Default of the ſaid *(the Husband and Wife)*.

C. B.

A Teſtatum Ca' Sa'.

(3.) *Is the ſame with the firſt* Ca' Sa' *to the Words*, whereof he is convicted, *then you ſay*, And foraſmuch as our Sheriff of *Suffolk* hath made a Return to our Juſtices at *Weſtminſter*, on *the Octaves of St.* Hillary laſt paſt, [or *at a certain Day now paſt*] that the ſaid *A.* is not to be found in his Bailiwick; whereas it is ſufficiently teſtified in our ſame Court, that he the ſaid *A.* lurks and wanders about in your County: And have you there this Writ. Witneſs, &c.

A Non omittas Ca' Sa'.

(4.) George, &c. To the Sheriff of *Suffolk*, Greeting: We command you, that you omit not by reaſon of any Liberty in your County, but enter therein, and take *A. B.* [*as in any other Writ of* Ca' Sa' *to the Words*, whereof he is convicted, *then you ſay*] and whereupon you yourſelf have returned [or *made a Return*] to our Juſtices at *Weſtminſter*, on the Octave of St. *Hillary* laſt paſt [or *at a certain Day now paſt*] that in order to get the ſaid Writ duly executed, you had ſent to the Bailiff of the Liberty of St. *Etheldred* in your County, who hath the full Power of executing and returning all Writs and Precepts within the ſaid Liberty; for that you could not execute the ſaid Writ in your County, out of the ſaid Liberty

berty, which Bailiff had given you no Manner of Anſwer thereto; And have you there this Writ.

A Teſtatum non Omittas Ca' Sa' in Debt upon a Bail-Bond.

(5.) George the Second, &c. To the Sheriff of *Berkſhire*, Greeting: Whereas we lately commanded our Sheriff of *Middleſex*, that he ſhould take *A. B.* Gentleman, otherwiſe called [*name him as in the Bond*] if he ſhould be found in your Bailiwick, and ſafely keep him, ſo that he ſhould have his Body before us at *Weſtminſter*, at a certain Day now paſt, to make Satisfaction to *C. D.* Aſſignee of *E. F.* Eſq; the late Sheriff of your County, according to the Form of the Statute in ſuch Caſe made and provided, for a Debt of 40 *l.* which the ſaid *C. D.* as Aſſignee of the ſaid late Sheriff, according to the Form of the Statute aforeſaid, in our Court before us at *Weſtminſter*, lately recovered againſt him; and alſo for 30 *s.* which, in our ſame Court before us at *Weſtminſter* aforeſaid, were adjudged to him the ſaid *C. D.* for his Damages which he had ſuſtained, as well by reaſon of detaining his ſaid Debt, as for his Expences and Coſts laid out by him about his Suit in this Cauſe, whereof the ſaid *A.* is convicted, as it appears to us of Record; and our ſaid Sheriff of *Middleſex*, at that Day, returned to us, that the ſaid *A.* was not found in his Bailiwick; whereupon on the Part of the ſaid *C.* it is ſufficiently teſtified in our Court before us, that the ſaid *A.* lurks and wanders about in your County; therefore we command you, that you omit not, by reaſon of any Liberty of *R.* in your County, but enter therein, and take the ſaid *A.* if he ſhall be found in your *Bailiwick*, and ſafely keep him, ſo that you have his Body before us at *Weſtminſter*, on [*the Return*] to ſatisfy the ſaid *A.* for his Debt and Damages aforeſaid: And have you there then this Writ. Witneſs, &c.

For an Executrix, againſt an Adminiſtratrix and her Husband.

(6.) George the Second, &c. To the Sheriff of *N. Greeting:* We command you to take *J. L.* and *M.* his Wife, Adminiſtratrix of all and ſingular the Goods and Chattels, Rights, and Credits, which were of *S. M.* deceaſed [*if on a Bond entered into by the Inteſtate, then you ſay*] otherwiſe called *S. M.* of, &c. [*as in the Bond*] if they ſhall be found, &c. [*as in the Precedent before*, Pl. 5.] to make Satisfaction to *E. B.* Widow, Executrix of the Laſt Will and Teſtament of *G. H.* Gentleman, her late Husband deceaſed, for a Debt of 40 *l.* which the ſaid *L. B.* in our Court before us at *Weſtminſter*, hath lately recovered, &c. [*and the reſt as in Page* 129, *at the Bottom*, mutatis mutandis].

A Ca' Sa' after a Devaſtavit.

(7.) George the Second, &c. To the Sheriff of *Suffolk*, Greeting: Whereas by our Writ we lately commanded you, that of the Goods and Chattels, which were of *W.* who died inteſtate, in the Hands of *T. M.* late of *Bury St. Edmunds* in your County, Adminiſtrator of the Goods and Chattels, which were of the ſaid *W.* in your Bailiwick, you ſhould cauſe to be made, as well a certain Debt of 20 *l.* which *J. C.* in our Court before our Juſtices at *Weſtminſter*, had recovered againſt him, as alſo 60 *s.* which had been adjudged to the ſaid *J.* in our Court, for his Damages and Coſts, occaſioned by detaining his Debt, if the ſaid *T.* had ſo much Goods of the ſaid *W.* in his Hands at the Time of his Death to be adminiſter'd; and if he had not, then the ſaid Damages to be levied of the proper Goods of the ſaid *Thomas*, whereof he was convicted; and that you ſhould have thoſe Monies before our Juſtices at *Weſtminſter*, at a certain Day now paſt, to be render'd to the ſaid *J.* for the Debt and Damages aforeſaid; And you returned to our Juſtices at *Weſtminſter* at that Day, that before that Writ came to you, the Goods and Chattels, which were of the ſaid *W.* at the Time of his Death, to the Value of the Debt and Damages afore-

aforeſaid, after the Death of the ſaid *W.* came to the Hands of the aforeſaid *T.* to be adminiſter'd; and that the ſaid *T.* before the ſaid Writ came to you, had waſted all thoſe Goods and Chattels, and converted them to his own Uſe, by which the Debt and Damages aforeſaid could not be made [or *levied*] of the aforeſaid Goods and Chattels; and you further returned to our Juſtices at *Weſtminſter* at that Day, that the ſaid *Thomas* had no Goods or Chattels of his own in your Bailiwick, whereof Damages aforeſaid, or any Part thereof could be levied, as you was commanded to do by that Writ: We therefore command you, that you take the aforeſaid *T.* if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you may have his Body before our Juſtices at *Weſtminſter*, from the Day of the *Holy Trinity* in three Weeks, to make Satisfaction to the ſaid *W.* for the Debt and Damages aforeſaid: And have you there this Writ. **Witneſs**, &c. Clift 846.

A Ca' Sa' upon a Non-Pros' in the Common Pleas.

(8.) **George** the Second, &c. To the Sheriff of *Norfolk*, Greeting: We command you, that you take *S. R.* Gentleman, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before our Juſtices at *Weſtminſter*, on the Morrow of the Aſcenſion of our Lord, to make * Satisfaction to *R. R.* late of *J.* in your

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* Upon a Non Pros' in Replevin, at the Aſterisk above, you ſay thus:

To make Satisfaction to R. R. *late of* J. *in your County, Maſon, for* 6 l. 10 *s. which, in our Court before our Juſtices at* Weſtminſter, *were adjudged to the ſaid* E. *according to the Form of the Statute in ſuch Caſe made and provided, for his Damages, which he ſuſtained in an Action for taking and unjuſtly detaining the Cattle of the ſaid* S. *taken by the ſaid* R. *at* L. *in a Place called* P. *and well and juſtly by him avowed in our ſaid Court, with a ſufficient Reaſon there alledged; and have you thoſe Monies*, &c. Meth. Nov. 314.

County, Maſon, for 6 *l.* 10 *s.* which, in our Court before our Juſtices at *Weſtminſter*, by the Diſcretion of the ſame Juſtices, according to the Form of the Statute in ſuch Caſe made and provided, were adjudged to the ſaid *R.* for his Damages; for that the ſaid *S. R.* doth not proſecute his Writ ſued out by him againſt the ſaid *R.* in our ſame Court, in an Action of *Treſpaſs*, whereof he is convicted: And have you there, *&c.*

Off. Brev. 30. Clift 840.

Or thus:

Upon a Non-Pros' in Debt.

(9.) ——— To make Satisfaction to *R. R.* for 6 *l.* which, in our Court before our Juſtices at *Weſtminſter*, by the Conſideration of that Court were adjudged to the ſaid *R.* for his Expences and Coſts ſuſtained by him in an Action of Debt ſued out againſt the ſaid *R.* by him the ſaid *S.* and not purſued according to the Form of the Statute made and provided againſt Parties Plaintiffs, who ſhould not proſecute their Writs in ſuch Actions, or be barred therein, whereof the ſaid *R.* is convicted: And have you there, *&c.*

Pl. Gen. 140.

The ſame in the King's Bench upon a Judgment had by the Defendant upon a Verdict.

(10.) ——— To make Satisfaction to *R. R.* for 27 *l.* which, in our Court before us at *Weſtminſter*, were adjudged to the ſaid *R.* according to the Form of the Statute in ſuch Caſe made and provided, for his Expences and Coſts ſuſtained by him about his Defence in an Action of Treſpaſs and Ejectment of a Farm, which *S. R.* in our Court before us at *Weſtminſter* aforeſaid had ſued in and proſecuted againſt the ſaid *R.* whereof the ſaid *S.* in our ſame Court before us is convicted, as it appears to us of Record: And have, *&c.*

Lilly 544.

A Ca' Sa' for the Defendant, againſt the Plaintiff, upon a Verdict found for the Defendant.

(11.) ——— To make Satisfaction to *A. H.* for 12 *l.* which, in our Court before our Juſtices at *Weſtminſter*, were adjudged to the ſaid *A.* for his Expences and Coſts, by reaſon that the Jury impanelled and ſworn between the ſaid *(Plaintiff)* and the ſaid *A.* in an Action of Debt for 20 *l.* gave

gave their Verdict againſt the ſaid *(Plaintiff)* whereof he is convicted, *&c.* Pl. Gen. 139.

C. B.

(12.) George the Second, *&c.* To the Sheriff of *Suffolk*, Greeting: We command you, that you take *J. L.* late of [*ſuch a Place*] in your County, Gentleman, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before our Juſtices at *Weſtminſter* in one Month from the Day of St. *Michael*, to make Satisfaction to *R. H.* for 11 *l.* 16 *s.* 8 *d.* which were adjudged to the ſaid *R.* in our Court, before our Juſtices at *Weſtminſter*, for his Damages which he ſuſtained by reaſon of a certain Treſpaſs and Ejectment committed at *B.* in your County, with Force and Arms, upon the ſaid *R.* by the ſaid *J.* whereof he is convicted: *And let there be an Execution of this Writ, any Writ of* Superſedeas *upon any Writ of Error of ours between the ſaid Parties, lately directed to you, in any wiſe notwithſtanding:* And have you there this Writ. Witneſs, &c. A Ca' Sa' in Ejectment, after a Non Pros' upon a Writ of Error. Clift 542.

If it be upon a Non Pros' *in Ejectment, without a Writ of Error, then the Words in* Italick *are to be omitted.* Mo. Intr. 256. 1 Inſtr. Cl. 293.

(13.) —— To make Satisfaction to us for a Debt of 30 *l.* which, in our Court before us at *Weſtminſter*, were adjudged to us for our Moiety; for that the ſaid *(Defendant)* hath exerciſed the Faculty of a Phyſician within the City of *London*, not being admitted to exerciſe that Faculty, by the Preſident of the Community of the Faculty of Phyſick in *London*, by Letters under the Seal of the Preſident and College of Phyſicians in *London*, contrary to the Form of Letters Patent heretofore granted to the Preſident and College for that Purpoſe, and of ſeveral Statutes in that Caſe made and provided, whereof the ſaid *E.* is convicted, at the Suit of *T. L.* the late Preſident of A Ca' Sa' for the King for the Moiety of the Forfeiture of a Penalty, notwithſtanding a Writ of Error and Superſedeas.

the College or Community of the Faculty of Phyſick of *London* aforeſaid, who in this Caſe ſued, as well for us as himſelf and the College aforeſaid, as it appears to us of Record (any Writ of *Superſedeas* to you directed in this Caſe notwithſtanding.) Witneſs, &c.

Hanſ. 239.

A Ca' Sa' upon a Quitam for the King and the Informer.

(14.) ——— To make Satisfaction, as well to us, as to *A. B.* for a Debt of 100 *l.* which, in our Court before our Juſtices at *Weſtminſter*, were adjudged to the ſaid *A.* who in this Caſe ſues as well for us as himſelf; and alſo 10 *l.* which in our ſame Court were adjudged to the ſaid *A.* who in this Caſe ſues as well for us as himſelf, for his Damages which he ſuſtained by reaſon of detaining the Debt, whereof he is convicted, *&c.*

Pl. Gen. 135.

Capias ſi Laicus.

B. R.

Capias ſi Laicus out of the Court of Chancery, returnable in K. B.

Lilly 550.

(1.) GEORGE, *&c.* To the Sheriff of *G.* Greeting: Foraſmuch as *A. B.* of, *&c.* on [*ſuch a Day and Year*, &c.] before *C. D.* then Mayor of the City of *B.* Keeper of the Great Piece of the Seal appointed for Sealing of Statutes Merchant within the ſaid City, and *E. F.* then the Clerk to the Keeper of the Small Piece of the ſame Seal, deputed to take Recognizances of Debts due to Merchants within the ſame City; acknowledged himſelf to owe to *B. B.* late of the ſaid City of *B.* deceaſed, the Sum of 600 *l.* of lawful Money of *Great Britain*, which he ought to have paid to him at the Feaſt of *All Souls* then next, and did not pay the ſame to the ſaid *B. B.* in his Life-time, nor to *C. D.* Executor of the Laſt Will and Teſtament of the ſaid *B. B.* ſince the Death of the ſaid *B. B.* as it is ſaid; We command you that you take the Body of the ſaid *A. B.*

A. B. if he is a Layman, and keep him ſafely in our Priſon until he ſhall have fully ſatisfy'd the ſaid 600 *l.* to the ſaid Executor; and that you make it known to us by Letters ſealed, in what Manner you execute this Writ, in three Weeks from the Day of St. *Michael*, whereſoever we ſhall then be in *England*: And have you there this Writ. **Witneſs** Ourſelf at *Weſtminſter*, *&c.*

The within named *A. B.* is a Layman, and is not found in my Bailiwick.

The Anſwer of, *&c.*

Return that Defendant is not to be found.

(2.) ff. **The Sheriff was Commanded**, that he ſhould take the Body of *A. B.* of, *&c.* if a Layman, and ſafely keep him in the Priſon of our ſaid Sovereign Lord the King, until he ſhould fully ſatisfy to *E. F. &c.* the Sum of 300 *l.* which he on the [*ſuch a Day and Year*] before *R. C.* Eſq; Mayor of the City of *S.* and *W. J.* Town-Clerk of the ſame City, appointed Deputy for taking Recognizances of Debts within the ſame City, acknowledged to owe to him the ſaid *E. F.* and which he ought to have paid at the Feaſt of St. *John Baptiſt* then next following, and hath not paid the ſame to him, as it is ſaid; and in what Manner, *&c.* he ſhould make known to our Sovereign Lord the King, on the Morrow of the *Holy Trinity*, whereſover, *&c.* by his Letters ſealed, *&c.* And now at this Day comes the ſaid *E. F.* by his ſaid Attorney, and brings the ſaid Recognizance into Court, dated the Day and Year above written, by which the ſaid Debt is teſtified in the Manner aforeſaid: And the Sheriff now returns, that the ſaid *A. B.* is a Layman, and is not found; and thereupon the ſaid *E. F.* prays a Writ to be directed to the ſaid Sheriff, according to the Statute, and 'tis granted to him, and in what Manner, *&c.* he ſhould make known to our ſaid Sovereign Lord the King, on the Octaves of St. *Hillary*, whereſoever, *&c.* At which Day came the ſaid *E. F.* by his ſaid Attorney, before his ſaid Majeſty at *Weſtminſter*, and the ſaid Sheriff

Entry of a **Capias ſi Laicus**, and Inquiſition and a **Liberate** thereon. Lill. Entr. 551.

Sheriff of the ſaid County of *W.* to wit, *H. M.* Eſq; then returned to his ſaid Majeſty an Inquiſition taken before him [*ſuch a Day and Year*] at *M.* in the ſaid County, by the Oath of twelve Men, by which it is found, that the ſaid *A. B.* in his Life-time, to wit [*ſuch a Day and Year*] was ſeiſed in his Demeſn as of Fee, of and in five Meſſuages, with the Appurtenances, lying and being in [*the Place where*] of the clear annual Value of 50 *l.* beyond all Reprizes; and it is further found by the ſaid Inquiſition, that the ſaid *A. B.* in his Life-time, to wit, on the ſaid [*the Day and Year above*] or at any Time afterwards, had not any other Lands or Tenements in his Bailiwick, to the Knowledge of the Jury of the ſaid Inquiſition, which they could in any Manner extend or value; which ſaid Meſſuages he the ſaid Sheriff cauſed to be delivered to the ſaid *A.* at the Price and Extent upon the Day of the taking of the ſaid Inquiſition, to hold to him and his Aſſigns as his Freehold, according to the Form of the Statute, until the ſaid Debt, together with his neceſſary and reaſonable Damages and Coſts, as in Labour, Suits, Delays and Expences, ſhould be levied thereout.

Entry thereof on the Roll.

(3.) *England*, ſſ. The Sheriff was commanded, that he ſhould take the Body of *A. B.* &c. if he was a Layman, and found in his Bailiwick, and keep him ſafe in the Priſon of our Sovereign Lord the King, until he ſhould fully have ſatisfied to *E. F.* Executor of *B. B.* deceaſed, the Sum of 600 *l.* which he the ſaid *A. B.* on [*ſuch a Day and Year*] before *C. D.* then Mayor of the City of *B.* and *E. F.* then deputed Clerk to take the Recognizances of Merchants Debts within the ſaid City, acknowledged himſelf to owe to the ſaid *B. B.* and which he ought to have paid at the Feaſt of *All Souls* then next following, and hath not paid the ſame to the ſaid *E. F.* in his Life-time, nor to the ſaid *E. F.* the Executor, after the Death of the ſaid *B. B.* ſince his Death; and in what Manner, &c. he ſhould make

make it known here at this Day, to wit, in three Weeks from the Day of St. *Michael*, wheresoever, &c. And now here at this Day comes the said *E. F.* by *J. M.* his Attorney, and brings into this Court, as well the said Letters Testamentary, by which it fully appears to his said Majesty's Court here, that he the said *E. F.* is Executor of the said Will, and thereof hath the Administration, &c. as the said Recognizance, which testifies the said Debt in the Form aforesaid; and the said Sheriff now returns, that the said *A. B.* is a Layman, and is not found in his Bailiwick; and thereupon the said *E. F.* prays his said Majesty's Writ, according to the Act of Parliament, to be directed to the Sheriff of the County aforesaid, and 'tis granted to him; and in what Manner, &c. that the said Sheriff make it known on the Octaves of St. *Hillary*. The same Day is given to the said *E. F.* to be there, &c.

Capias Utlagatum.

(1.) GEORGE the Second, &c. To the Sheriff of *Kent*, Greeting: We command you, that you omit not by reason of any Liberty in your County, but that you take *A. N.* late of *D.* in your County, Yeoman, outlawed in your County on the fifth Day of *June*, in the Sixth Year of our Reign, at the Suit of *W. M.* in an Action of Debt, whereof he is convicted, if he shall be found in your Bailiwick, and keep him safely, so that you have his Body before our Justices at *Westminster*, on the Morrow of *All Souls*, to do and abide by what our Court shall adjudge concerning him in this Particular: And have you there this Writ. Witness, &c.

A Capias Utlagatum general in the Com. Pleas.

Off. Brev. 35.

C. B.

C. B.

A Special Capias Utlagatum.

(2.) George the Second, &c. To the Sheriff of *Hertford*, Greeting: We command you, that you omit not by reaſon of any Liberty in your County, but that you diligently inquire, by the Oath of honeſt and lawful Men of your County, what Goods and Chattels, Lands and Tenements *C. M.* late of *H.* in your County, Yeoman, hath or had in your Bailiwick, on *Monday* next before the Feaſt of St. *George the Martyr*, in the 7th Year of our Reign, or at any Time ſince; on
Off. Brev. 35. which Day he was outlawed in *London*, at the Suit of *R. P.* of a Plea of Debt [or *in an Action of Debt*] as our Sheriffs of *London*, at a certain Day now paſt have returned to our Juſtices at *Weſtminſter*; and by their Oath do you cauſe them to be extended and appraiſed, according to the true Value thereof; and do you ſeiſe thoſe Things, which you ſhall find by the Inquiſition into our Hands, ſo that you anſwer us for the true Value and the Profits thereof; and the ſame being ſo extended and appraiſed, what you ſhall do therewith, do you make known to our Juſtices at *Weſtminſter*, on the Morrow of *All Souls*, plainly and diſtinctly under your Seal and Seals of thoſe by whoſe Oath you ſhall make ſuch Extent and Appraiſment; and for that the ſaid *C.* being outlawed lurks and wanders about in your County, to the Contempt of us and Prejudice of our Crown, as we are informed, We command you, that you take the ſaid *C.* whereſoever he ſhall happen to be found in your Bailiwick, as well within Liberties as without; and keep him ſafely, ſo that you have his Body before our Juſtices at *Weſtminſter*, at the Time aforeſaid, to do and abide by what our Court ſhall adjudge concerning him in this Particular: And have you there this Writ. Witneſs, &c.

B. R.

(3.) George the Second, &c. To the Sheriff of *Hertford*, Greeting: We command you, that you omit not by reaſon of any Liberty in your County, but diligently inquire by the Oaths of honeſt and lawful Men of your ſame County, what Goods and Chattels, Lands and Tenements *C. D.* late of, &c. hath or had on *Monday* next after the Feaſt of, &c. [*the Day of the* Quinto Exactus] in the 8th Year of our Reign, in your Bailiwick, on which Day the ſaid *C. D.* was outlaw'd in *London*, as our Sheriffs of *London* have returned to us thereupon at *Weſtminſter*, and do you cauſe them to be extended and appraiſed by their Oath, according to the true Value thereof; and thoſe Things, which you ſhall find by the Inquiſition, do you take into our Hands, and cauſe them to be ſafely kept, ſo that you anſwer to us for the true Value of the Profits thereof; and what you ſhall do therein, do you make it known to us [*ſuch a Return*] whereſoever we ſhall then be in *England*, plainly and diſtinctly under your Seal and the Seals of thoſe by whoſe Oath you ſhall make ſuch Extent and Appraiſment: And for that the ſaid *(Defendant)* being ſo outlawed, lurks and wanders about in your County, to the Contempt of us and Prejudice of our Crown, as we have been informed, We command you, that you take the ſaid *(Defendant)* if he ſhall be found in your Bailiwick, as well within Liberties as without, and keep him ſafely, ſo that you may have his Body before us, at the Time aforeſaid, whereſoever we ſhall then be in *England*, to do and abide by what our Court before us ſhall adjudge in this Particular: And have you there, &c. Theſ. Brev. 59.

A Special Cap' Utlag'.

B. R.

(4.) George the Second, &c. To the Sheriffs of *Middleſex*, Greeting: We command you, that you omit not by reaſon of any Liberty within your Coun-

A General Cap' Utlag' in Caſe.

County, but take *R. O.* late of *D.* in your County, Gentleman, outlawed in *London*, on *Monday* next after the Feaſt of the Apoſtles St. *Simon* and *Jude*, in the 7th Year of our Reign, at the Suit of *J. C.* Eſq; in an Action of Treſpaſs upon the Caſe, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that you have his Body before us in fifteen Days from *Eaſter Day*, whereſoever we ſhall then be in *England*, to ratify and confirm what our Court before us ſhall adjudge concerning him in this Caſe: And have you then there this Writ. Witneſs, &c.

Theſ. Brev. 60.

A General Cap' Utlag' in Treſpaſs and Aſſault, directed to the Chancellor of the County Palatine of Lancaſter.

(5.) George the Second, &c. To the Chancellor of our County Palatine of *Lancaſter*, or his Deputy there, Greeting: We command you, that by our Writ under the Seal of the County Palatine aforeſaid, to be duly made out, you direct the Sheriff of the County aforeſaid, that he omit not by reaſon of any Liberty in your County, but that he take *R. R.* late of *London*, Gentleman, outlawed in *London* [*ſuch a Day and Year*] in a Plea [or *in an Action*] of Treſpaſs and Aſſault, if he ſhall be found in his Bailiwick, and keep him ſafely, &c. ſo that, &c. [*as in the former*]

A Special Ca' Utlagat', after a Record removed from the C. B. to the K. B. and the Outlawry affirmed upon the Writ of Error.

(6.) George the Second, &c. To the Sheriff of *Suffolk*, Greeting: We command you, that you omit not by reaſon of any Liberty in your County, but that you diligently inquire by the Oath of twelve honeſt and lawful Men of your County, what Goods and Chattels, Lands and Tenements *D. W.* of [*ſuch a Place*] in your County, hath or had in your Bailiwick, on [*ſuch a Day*] or at any Time after, on which Day the ſaid *D.* was outlawed in *London* at the Suit of *T. H.* in an Action of Treſpaſs upon the Caſe, as our Sheriffs of *London*, at a certain Day now paſt, have returned to Sir *Robert Eyre*, Knight, and his Brethren our Juſtices of the Bench [or *of the Court of Common Pleas*] at *Weſtminſter*; and by their Oath, do you cauſe them to be extended and appraiſed according to the true Value thereof; and thoſe

Things, which you ſhall find by the Inquiſition, do you ſeiſe into our Hands, and cauſe them to be kept ſafely, ſo that you anſwer to us for their true Value, and the Profits thereof; and when they are ſo extended and appraiſed, what you ſhall do therewith, do you make known to us [*ſuch a Return*] whereſoever we ſhall then be in *England*, plainly and diſtinctly under your Seal and the Seals of thoſe by whom you ſhall ſo make ſuch Extent and Appraiſment: And for that the ſaid *D. W.* being ſo outlawed lurks and wanders about in your County, to the Contempt of us and the Prejudice of our Crown, as we are informed, We command you take the ſaid *D.* whereſoever he ſhall happen to be found in your Bailiwick, as well within Liberties as without, and keep him ſafely, ſo that you have his Body, &c. [*as the next Precedent at the* Aſterisk *below*].

A Capias Utlagat', after a Judgment affirmed upon a Writ of Error in the K. B.

(7.) George the Second, &c. To the Sheriffs of *L. Greeting:* We command you, that you omit not by reaſon of any Liberty of your City, but that you take *M. S.* late of [*ſuch a Place*] Taylor, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that ye have his Body *before us [*on ſuch a Return*] whereſoever we ſhall then be in *England*, to ſtand Right in our Court before us upon a certain Outlawry proclaimed againſt him the ſaid *M.* at the *Huſtings* of a Plea of Land, holden at the *Guildhall* of the City of *London*, on *Monday*, &c. (*the Day on which the Defendant was* Quinto Exactus) and returned into our Court before us, at the Suit of *R. A.* Executor of the Teſtament [*of ſuch a one, if at the Suit of an Executor*] of a Plea [or *in an Action of Debt*] whereof he is convicted, as by inſpecting the Record, and Proceſs thereof, which we lately cauſed to be brought before us with certain Cauſes of Error, it appears to us of Record: And have you then there, &c.

Capias

Capias in Withernam.

(1.) GEORGE the Second, &c. To the Sheriff of *Suffolk*, Greeting: Whereas we lately commanded you by our Writ, that whereas *T. B.* Gentleman, had been attached by our Writ of Second Deliverance, to appear in our Court before us, to anſwer to *J. S.* in an Action, wherefore he took the Cattle of the ſaid *J.* and unjuſtly detained them againſt Sureties and Pledges, and the ſaid *J. S.* in our ſame Court made Default; wherefore it was conſidered in our ſame Court, that the ſaid *T. B.* ſhould depart hence without a Day, and that the ſaid *J. S.* and his Pledges for proſecuting ſhould be amerced; and that the ſaid *T. B.* ſhould have a Return of the Cattle aforeſaid irreplegiable; and that you without Delay ſhould make a Return of thoſe Cattle to the ſaid *T. B.* to be detained by him irreplegiable; and in what Manner you ſhould execute that Writ, you ſhould make known to us [*ſuch a Return*] whereſoever we ſhould then be in *England*; and you at that Day returned to us, that the Cattle aforeſaid were eloined by the ſaid *T. S.* to Places unknown to you, ſo that you could not return or deliver thoſe Cattle to the ſaid *T. B.* as you was commanded by the ſaid Writ; therefore we command you, that you take ſo many Cattle of the ſaid *J. S.* to the Value of the Cattle aforeſaid, before taken by the ſaid *J. S.* in *Withernam*, and deliver them to the ſaid *T. B.* to be kept by him irreplegiable, until you can make a Return of thoſe Cattle before taken, to the ſaid *T. B.* and in what Manner you ſhall execute this our Mandate, do you make appear to us on the Octaves of St. *Hillary*, whereſoever we ſhall then be in *England*; and that you cauſe further to be done therein, what of Right, and according to the Laws and Cuſtoms of this our Kingdom of *Great Britain*, we ſhall ſee meet to be done; We alſo command you, that if the ſaid *T. B.* ſhall make you ſecure

of profecuting his Claim, and of returning the Chattels aforefaid, if a Return thereof ſhould be adjudged, then do you compel the ſaid *J. S.* by Sureties and ſafe Pledges, that he be before us [*ſuch a Return*] whereſoever we ſhall then be in *England*, to anſwer as well to us for the Contempt, as to the ſaid *T. B.* for his Damage and Injury done him in this Caſe: And have you there this Writ. **Witneſs**, &c.

A **Capias in Withernam**, upon a Writ of **Plures Replegiari Facias.**

(2.) **George** the Second, *&c.* To the Sheriff of *E.* Greeting: Whereas we have often commanded you, that you ſhould juſtly and without Delay grant a Replevin to *R. E.* of his Chattels (to wit) of thoſe which *T. T.* and *J. C.* had taken and unjuſtly detained (as it is ſaid) according to our Writ before delivered to you, or that you ſhould be before us [*ſuch a Return*] whereſoever we ſhould then be in *England*, to ſhew us a reaſon, why you neglected to execute our Mandates ſo often directed to you: And you at that Day made a Return to us, that the Chattels aforeſaid were eloined by the ſaid *T. T.* and *J. C.* out of your Bailiwick to Places to you unknown, ſo that you could in no wiſe grant a Replevin thereof to the ſaid *R.* Therefore we command you, *&c.* [*as in the former*].

A **Capias in Withernam**, upon a **Retornum Habendo**, after an Avowry and a **Ca' Da'** againſt the Party for the Damages.

(3.) **George** the Second, *&c.* To the Sheriff of the City of *G.* Greeting: Whereas *J. P.* was lately ſummoned in our Court before us, to anſwer to *J. W.* of a Plea [or *in an Action*] wherefore he on the 28th Day of *April* [*in ſuch a Year*] at the City of *G.* (to wit) in a Place there called *P.* had taken the Cattle of the ſaid *J.* to wit, twenty Sheep, and impounded and unjuſtly detained them, againſt Sureties and Pledges, until, *&c.* (as he declared); and the ſaid *J. P.* appearing in our ſaid Court, for a certain reaſon therein alledged by him, well avowed the Taking of the ſaid Cattle in the ſaid Place where, *&c.* to be juſt, *&c.* for Damage feaſant

The Declaration.

The Avowry.

feaſant therein; and the ſaid *J. W.* afterwards in our ſame Court, made Default: Wherefore it was conſidered there, that they and their Pledges for proſecuting ſhould be amerced, *&c.* and that the ſaid *J.* ſhould be diſmiſſed therefrom without a Day; and that he ſhould have a Return of the Cattle aforeſaid: Therefore we lately commanded you, that you ſhould without Delay make a Return of the Cattle aforeſaid, to the ſaid *J. P.* and that you ſhould not deliver them at the Deſire of *J. W.* without our Writ, which ſhould expreſly mention the Judgment aforeſaid; and in what Manner you ſhould execute that Precept, you ſhould make appear to us [*on the Return*] whereſoever we ſhould then be in *England*; We alſo lately commanded you, that according to the Statute in ſuch Caſe made and provided, you ſhould diligently inquire by the Oaths of honeſt and Lawful Men of your Bailiwick, what Damages the ſaid *J. P.* had ſuſtained, as well by reaſon of the Premiſſes, as for his Expences and Coſts laid out by him about his Suit in that Behalf; and that you ſhould return to us at the Time aforeſaid, the Inquiſition which you ſhould take thereon, under your Seal and the Seals of thoſe Perſons by whom you ſhould take the Inquiſition, together with this Writ; and you at that Day returned to us, that the ſaid Cattle had been eloined by the ſaid *J. W.* to Places unknown to you; for which reaſon you could not return thoſe Cattle to the ſaid *J. P.* and you alſo returned a certain Inquiſition taken before you in the City of *G.* in the County of the ſaid City, on the 19th Day of *April* [*in ſuch a Year*] whereby it was found, that the ſaid *J.* had ſuſtained Damages by reaſon of the Premiſſes, beſides his Expences and Coſts laid out by him about his Suit in that Behalf, to 10 *s.* and for his Expences and Coſts to 2 *d.* Therefore it was adjudged, that the ſaid *J. P.* ſhould recover againſt the ſaid *J. W.* his Damages aforeſaid found by the Inquiſition aforeſaid; and alſo 10 *l.* awarded by our Court before us, to the ſaid *J. P.*

Default.

Miſericordia.

Sine die.

Return of the Cattle.

Second Deliverance.

Elongata returned by an Inquiſition.

The finding of the Jury.

Judgment.

J. P. for his Expences and Coſts by Way of Increaſe; which ſaid Damages in the whole amounted to 10 *l.* 10 *s.* 2 *d.* and that the ſaid *J. W.* ſhould be amerced; Therefore we command you, that you take ſo many Cattle of the ſaid *J. W.* in your Bailiwick, in *Withernam*; and without Delay cauſe them to be delivered to the ſaid *J. W.* to be detained by him irreplegiable till he will make a Return of the ſaid Cattle before taken; to the ſaid *J. B.* and in what Manner you ſhall execute this our Writ, do you make appear to us on the Octaves of St. *Hillary*, whereſoever we ſhall then be in *England*: We command you alſo, that you take the ſaid *J. W.* if he ſhall be found in your Bailiwick, and keep him ſafely, ſo that you have his Body before us at the Time aforeſaid, whereſoever we ſhall then be in *England*, to ſatisfy the ſaid *J. P.* for the Damages aforeſaid: And have you there then this Writ. Witneſs, &c. Withernam. Ca' Sa'. Theſ. Brev. 62.

Caſe.

General Pleas in Aſſumpſit.

The General Plea in an Aſſumpſit, *which (becauſe it concludes to the Country, and denies the whole Charge in the Declaration, without any Matter of Excuſe) is called the General Iſſue or* Non Aſſumpſit.

(1.) AND the ſaid *C.* by *E. F.* his Attorney, comes and defends the Force and Injury, when, &c. (or comes and defends the Force, Injury and Damages, and whatever elſe he ought Non Aſſumpſit.

to defend, when, where and in what Manner the Court ſhall direct) and pleads, that he did not undertake [or *that he made no ſuch Promiſe or Promiſes*] in the Manner and Form as the ſaid *A.* above complains againſt him; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame. *The Form in the* King's Bench *of the Award of the* Venire, *is thus:* Therefore let a Jury thereon appear before our Sovereign Lord the King at *Weſtminſter*, on * *Monday next after the Octaves of the Purification of the Bleſſed Virgin* Mary, by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* the ſame Day is given to the Parties aforeſaid to be there, *&c.* ——— *If it be on an* Original *in the* King's Bench, *then you make the Return as in the* Common Pleas *thus; on the Octaves of the Purification of the Bleſſed Virgin* Mary. ——— *The Form of the* Award *of the* Venire *in the* Common Pleas, *differs ſomewhat from the* former; *as for Example, thus:* Therefore the Sheriff is commanded, that he cauſe to come [or *to appear*] here on the Octaves of the Purification of the Bleſſed Virgin *Mary*, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* *and no further.*

Non Aſſumpſit within Six Years.

(2.) And the aforeſaid *C.* by *J. M.* his Attorney, comes and defends the Force and Injury, when, *&c.* and ſaith, that the aforeſaid *A.* ought not to have his Action againſt the ſaid *C.* becauſe he ſaith, that at any Time within ſix Years, before the Day of ſuing out the Original Writ of the ſaid *A.* he did not undertake [or *made no ſuch Promiſe or Promiſes*] in ſuch Manner and Form as the ſaid *A.* above complains againſt him; and this he is ready to verify:

* *In Country Cauſes, the laſt Day of the Term the Iſſue is made up in; if in* London *or* Middleſex, *then upon ſome Day before the Trial.*

Where-

wherefore he prays Judgment, whether the ſaid *A* ought to have his Action aforeſaid, againſt the ſaid *C.* thereupon, &c.

Replication.

(3.) And the ſaid *A.* replies, that he, notwithſtanding any Thing above alledged by the ſaid *C.* ought not to be precluded from having his Action aforeſaid againſt the ſaid *C.* becauſe he ſaith, that the ſaid *C.* within ſix Months before the Day of ſuing out the ſaid Original of the ſaid *A.* (to wit) on the 7th Day of *June*, in the 1ſt Year of the Reign of his preſent Majeſty at *Thetford* aforeſaid, in the County aforeſaid, did undertake [or *did make ſuch Promiſe or Promiſes*] in ſuch Manner and Form as the ſaid *A.* above complains againſt him; and this he prays may be inquired of by the Country, and the ſaid *C.* does likewiſe the ſame: Therefore the Sheriff is commanded, that he cauſe to come here in eight Days of the Purification of the Bleſſed Virgin *Mary* twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

Non Aſſumpſit infra ſex Annos, to the 1ſt and 2d Promiſes

2 Ventr. 255. Every v. Carter.

(4.) And the ſaid *J.* by *T. P.* his Attorney, comes and defends the Force and Injury, when, &c. and as to the firſt and ſecond Promiſe and Undertaking abovementioned, he pleads, that the ſaid *J. E.* ought not to have his Action aforeſaid thereon againſt him, becauſe he ſaith, that he the ſaid *J. C.* at any Time within ſix Years before the Day of the ſuing out of the Original Writ of the ſaid *J. E.* did not undertake in ſuch Manner and Form as the ſaid *J. E.* above complains againſt him; and this he is ready to verify: Whereupon he prays Judgment, whether the ſaid *J. E.* ought to have his ſaid Action thereupon againſt him, &c. And as to the third and fourth Promiſes and Undertakings above mentioned in the ſaid Declaration, the ſaid *J. C.* pleads, that he did not undertake in ſuch Manner and Form as the ſaid *J. E.* above complains againſt him; and thereof he puts himſelf upon the Country; and the ſaid *J.* does likewiſe the ſame.

To the 3d and 4th Promiſes Non Aſſumpſit generally.

Replication, as to the firſt and Second Promiſes, the Plaintiff replies, and ſets forth an Original ſued out on a Clauſum fregit within ſix Years.

(5.) And the ſaid *J. E.* as to the Plea aforeſaid of the ſaid *J. C.* as to the firſt and ſecond Promiſes and Undertakings above-mentioned in the ſaid Declaration, replies, that he ought not by any Thing above alledged in the ſaid Plea, to be precluded from having his ſaid Action thereupon againſt him, becauſe he ſaith, that he the ſaid *J. E.* after the ſaid Promiſe and Undertaking was made, in the Manner aforeſaid, that is to ſay, on the 11th Day of *May*, in the Second Year of the Reign of our Sovereign Lord the now King [or *of his preſent Majeſty*] for the Recovery of his Damages, occaſioned by the Non-Performance of thoſe Promiſes and Undertakings, he proſecuted out of the Court of Chancery of our ſaid Sovereign Lord the King, a certain Original Writ of our ſaid Sovereign Lord the King in this Caſe againſt the ſaid *J. C.* directed to the then Sheriff of the County of *S.* returnable before the then Juſtices of our ſaid Sovereign Lord the King of his Court of Common Bench at *Weſtminſter*, on *the Morrow of the* Holy Trinity, then next enſuing, to anſwer to the ſaid *J. E.* with an Intent, that the ſaid *J. C.* ſhould be taken and arreſted; and the ſaid *J. E.* upon the Appearance of the ſaid *J. C.* in the ſame Court, at the Suit of the ſaid *J. E.* might declare for the Recovery of his Damages, occaſioned by the Non-performance of the Promiſe and Undertaking abovementioned; and that he the ſaid *J. C.* within ſix Years next before the Day of the ſuing out of the ſame Original Writ in this Caſe, did undertake in the Manner and Form as the ſaid *J. E.* above declares againſt him; and this he prays may be enquired of by the Country, *&c.*

And that the Defendant promis'd within ſix Years, &c.

Rejoinder, the Defendant craves Oyer of the Original.

(6.) And the ſaid *J. C.* craves Oyer of the ſaid Original Writ of the ſaid *J. E.* above-mentioned in the ſaid Replication, and it is read to him in theſe Words: George *the Second, by the Grace of God of* Great Britain, France *and* Ireland, *King, Defender of the Faith*, &c. *To the Sheriff of* Stafford,

Stafford, *Greeting*: [*ſetting forth a* Clauſum Fregit Original] which being read and heard the ſaid *J. C.* rejoins, that the ſaid *J. E.* ought not to be admitted or received to ſhew that Original Writ above-mentioned in the ſaid Replication, to warrant his Declaration aforeſaid now made and declared againſt the ſaid *J. C.* becauſe he ſaith, that the Original Writ whereupon the ſaid *J. E.* hath above declared in an Action, wherefore the ſaid *J. C.* on the ſaid 1ſt Day of *March* [*in ſuch a Year was indebted, ſetting forth the Declaration*] to which ſaid Original Writ, he the ſaid *J. C.* appearing in this Court, at the Suit of the ſaid *J. E.* he the ſaid *J. E.* thereupon declared againſt him the ſaid *J. C.* in the Action aforeſaid ſpecified in the ſaid laſt mentioned original Writ, and not upon the Original Writ above ſuppoſed by the ſaid *J. E.* in his ſaid Replication; and this he is ready to verify: Whereupon he prays Judgment, whether the ſaid *J. E.* ought to be admitted or received to ſhew the ſaid Original Writ above-mentioned in the ſaid Replication, to warrant his ſaid Declaration now made and ſet forth againſt the ſaid *J. C.* &c.

To this there was a Demurrer, and a Joinder in Demurrer, but no Judgment given. 2 Vent. 259, 260.

(7.) And the ſaid *A.* by *J. S.* his Attorney, comes and defends the Force and Injury, when, &c. and pleads, that the ſaid *T.* and *M.* ought not to have or maintain their ſaid Action againſt her, becauſe ſhe ſaith, that ſhe at any Time within ſix Years next before the Day of ſuing forth of the Original Writ of the ſaid *T.* and *M.* did not undertake [or *made no ſuch Promiſe or Promiſes*] in the Manner and Form as they the ſaid *T.* and *M.* have above complained againſt her; and this ſhe is ready to verify: And therefore prays Judgment, whether the ſaid *T.* and *M.* ought to have or maintain their ſaid Action againſt her, &c.

Non Aſſumpſit within ſix Years pleaded to an Adminiſtratrix. Lilly's Entr. 471.

Replication, that Adminiſtration was committed ſuch a Day, by which the Action accrued within ſix Years.

(8.) And the ſaid *T.* and *M.* reply, that they for any Thing before alledged, ought not to be precluded from having their ſaid Action againſt the ſaid *A.* becauſe they ſay, that within ſix Years now laſt paſt, to wit, the ſaid 4th Day of *April*, in the ſaid Year of our Lord 1699. the above mentioned Adminiſtration was duly committed to her the ſaid *M.* in the Manner aforeſaid, to wit, at *Weſtminſter* aforeſaid, by which the ſaid Action accrued to the ſaid *T.* and *M.* within the ſaid ſix Years; and this they are ready to verify: And therefore they pray Judgment, and their Damages occaſioned by the Premiſſes to be adjudged to them, *&c.*

Demurrer and Judgment for the Plaintiff, which was affirmed on a Writ of Error.

B. R.

Special **Replication** to **Non Aſſumpſit infra ſex Annos,** that the Plaintiff ſued out a **Lat'**; and that the Cauſe of Action accrued within ſix Years before.

(9.) And the ſaid *A.* replies, that for any Thing before alledged, he ought not to be precluded from having his ſaid Action againſt the ſaid *C.* becauſe he ſaith, that after the ſaid Cauſe of Action of him the ſaid *A.* above ſpecified, accrued to him the ſaid *A.* and within ſix Years next before the Exhibiting of the ſaid Bill of him the ſaid *A.* againſt the ſaid *B.* to wit, on the 10th of *February*, in the 6th Year of the Reign of his ſaid preſent Majeſty, he the ſaid *A.* for the Recovery of his Damages, for the Cauſe above mentioned, ſued out of the Court of our ſaid Sovereign Lord the King, before the King himſelf (the ſaid Court then being at *Weſtminſter*, in the County of *Middleſex*) his Majeſty's Writ of *Latitat*, againſt the ſaid *C.* directed to the then Sheriff of *N.* by which Writ the ſaid King commanded the ſaid Sheriff, that he ſhould take the ſaid *C.* if he ſhould be found in his Bailiwick, and ſafely keep him, ſo that he ſhould have his Body before his ſaid Majeſty at *Weſtminſter*, on *Wedneſday next after fifteen Days*

Lat' ſued out.

Days of Eaſter then next following, to anſwer to the ſaid *A.* in an Action of Treſpaſs; and that the ſaid Sheriff ſhould then have there the ſaid Writ, which ſaid Writ he the ſaid *A.* ſued out againſt the ſaid *B.* with an Intent, that upon the Appearance of the ſaid *C.* thereto, he the ſaid *A.* might declare, as well in the ſaid Action of Treſpaſs above mentioned, as in the ſaid Action upon the Caſe, wherein the ſaid *A.* hath declared againſt the ſaid *C.* which ſaid Writ afterwards, and before the Return thereof, to wit, on the 10th Day of *March*, in the ſaid 6th Year of the Reign of his ſaid preſent Majeſty, at *N.* aforeſaid, in the County aforeſaid, was delivered to *W. B.* then Sheriff of the ſaid County of *N.* to be executed in due Form of Law, which ſaid *W. B.* then Sheriff of *N.* afterwards, and before the Return of the ſaid Writ, to wit, on the 20th Day of *March*, in the ſaid 6th Year of the Reign of his ſaid preſent Majeſty, at *O.* aforeſaid in the County aforeſaid, took the ſaid *C.* and there had him in Cuſtody, until the ſaid *C.* gave Bail to the ſaid Sheriff for the Appearance of him the ſaid *C.* before his ſaid Majeſty at *Weſtminſter*, at the Suit of the ſaid *A.* at the Return of the ſaid Writ: And the ſaid *A.* further ſaith, that the ſaid *C.* afterwards, to wit, on *Wedneſday* next after fifteen Days of *Eaſter*, in the ſaid 6th Year aforeſaid, appear'd by *W. D.* his Attorney, in the ſaid Court of his ſaid Majeſty, before his Majeſty himſelf, at the Suit of the ſaid *A.* at the Return of the ſaid Writ; and thereupon the ſaid *A.* declared againſt the ſaid *C.* by his ſaid Bill, in the Manner and Form aforeſaid, for the ſaid Cauſe of Action in the ſame Court of his ſaid Majeſty, before his ſaid Majeſty himſelf, to wit, at *Weſtminſter* aforeſaid, in the ſame *Eaſter Term*, in the ſaid 6th Year of his ſaid Majeſty's Reign; and that the ſaid Cauſe of Action, whereupon the ſaid *A.* hath declared againſt the ſaid *C.* accrued within ſix Years, before the ſuing forth of the ſaid *Latitat*; and this he is ready to verify: Where-

Delivered to the Sheriff.

Defendant taken.

Averment.

fore

fore he prays Judgment, and his Damages, occaſioned as aforeſaid, to be adjudged to him, &c.

A Replication to a Plea of Non Aſſumpſit infra ſex Annos, where a Lat' is continued by Capias, Alias & Pluries.

Mod. Intr. 140.

Plaintiff tendered himſelf at the Day.

not to be found returned.

Plaintiff tendered himſelf at the Day.

Sheriff made no Return.

Pluries.

The Intent.

(10.) *Begin according to the next foregoing Precedent, and go on to the End of the* Latitat, (*and then ſay*) at which Day came the ſaid *A.* (*the Plaintiff*) in his own Perſon before his Majeſty at *Weſtminſter*; and then and there tender'd himſelf againſt the ſaid *C.* in the ſaid Action: And the ſaid then Sheriff of *E.* to wit, *M. N.* Eſq; at that Day returned, that the ſaid *C.* was not found in his Bailiwick, and the ſaid *C.* did not appear; therefore the ſaid Sheriff was commanded as before [*and ſo go on to the End of the* Alias Capias, *and then ſay*] at which Day came the ſaid *A.* in his own Perſon before his ſaid Majeſty at *Weſtminſter*, and then and there tender'd himſelf againſt the ſaid *C.* in the ſaid Action: And the ſaid Sheriff did not return the Writ, or do any Thing thereon; therefore the ſaid then Sheriff of *E.* was commanded, as he had been often before commanded [*and ſo go on to the End of the* Plur' Cap', *and then ſay*] which ſaid ſeveral Writs ſued out in the Manner aforeſaid, and ſtill depending, were ſued out by him the ſaid *A.* againſt the ſaid *C.* to the Intent that the ſaid *C.* by Virtue of one of them, ſhould be taken and arreſted thereon, and for want of Bail, or the Appearance of the ſaid *C.* at the Suit of him the ſaid *A.* at the Return of one of the ſaid Writs, that the ſaid *C.* ſhould be committed to the Cuſtody of the Marſhal of the Marſhalſea of this Court; and that upon ſuch Appearance of the ſaid *C.* or his Commitment to the ſaid Marſhal of the Marſhalſea, he the ſaid *A.* according to the Cuſtom of the ſaid Court Time out of Mind uſed and approved of in the ſame Court, might implead the ſaid *C.* and declare againſt the ſaid *C.* in the ſame Court, for the ſaid Cauſe of Action in the ſaid above Declaration ſpecified: And the ſaid *A.* further ſaith, that the ſaid

ſaid *C.* by Virtue of the ſaid Writ of *Capias* laſt mentioned, ſued out and proſecuted in the Manner aforeſaid, was taken and arreſted in *Trinity Term* in the 9th Year of his ſaid Majeſty's Reign, and for want of Bail was committed by the Court of our ſaid Sovereign Lord the King before the King himſelf, to the Cuſtody of the Marſhal of the Marſhalſea, at the Suit of the ſaid *A.* and thereupon the ſaid *A.* did by his ſaid Bill declare againſt the ſaid *C.* ſo being in the Cuſtody of the ſaid Marſhal of the Marſhalſea, for the ſaid Cauſe of Action in the ſame Court of his ſaid Majeſty, before his Majeſty himſelf, to wit, at *Weſtminſter* aforeſaid, in the ſame *Trinity Term*, in the ſaid Ninth Year of the Reign of his ſaid Majeſty; and this he is ready to verify: Wherefore he prays Judgment and his Damages, occaſioned as aforeſaid, to be adjudged to him, *&c.*

Defendant arreſted. Averment, that Defendant was committed.

(11.) And the ſaid *Henry* and *Katharine* by *Henry Baldwin*, their Attorney, come and defend the Force and Injury, when, *&c.* and plead, that the ſaid *William* and *Henry* ought not to have their Action aforeſaid againſt them, *&c.* becauſe they ſay, that at the Time when the ſaid Promiſes and Undertakings were above ſuppoſed to have been made, ſhe the ſaid *Katharine* was within the Age of twenty one Years, to wit, of the Age of eighteen Years, and no more; and this they are ready to verify: Whereupon they pray Judgment, whether the ſaid *William* and *Henry* ought to have their ſaid Action thereof againſt them, *&c.*

A **Plea** to an **Action** brought againſt Husband and Wife, for Goods ſold to the Wife **dum Sola**, that ſhe was within Age.

(12.) And the ſaid *William* and *Henry* reply, that they ought not to be precluded from having their ſaid Action by any thing above alledged, becauſe, proteſting that the ſaid *Catharine*,

A **Replication**, taking a **Proteſtation**, that ſhe was not under Age; for Plea, that the Wares ſpecified in the ſaid Declaration ſold and deliver'd to the Plaintiff's Wife, while ſhe was ſingle, were for convenient and neceſſary Cloathing, &c.

tharine, at the Time of the Promiſes and Undertakings aforeſaid, was not under the Age of twenty-one Years, as they the ſaid *Henry* and *Catharine* have above alledged, they the ſaid *William* and *Henry Lyndſey* plead by way of Replication, that the Wares aforeſaid above ſpecified in the Declaration aforeſaid, ſold and delivered to the ſaid *Catharine*, in the Manner aforeſaid, by them the ſaid *William* and *Henry Lyndſey*, were for neceſſary and convenient Apparel and Cloathing for the ſaid *Catharine*; and this they are ready to verify: Wherefore they pray Judgment, and their Damages by reaſon of the Premiſſes to be adjudged to them, *&c.*

Rejoinder taking a Proteſtation, that the Wares, &c. were not for neceſſary Apparel, &c. a Demurrer.

(13.) And the ſaid *Henry* and *Catharine proteſting*, that the Wares aforeſaid, above ſpecified in the ſaid Declaration, were not ſold and delivered to the ſaid *Catharine*, for neceſſary Apparel and Cloathing, as the ſaid *William* and *Henry Lindſey* above alledged, they the ſaid *Henry* and *Catharine* plead by way of Rejoinder, that the ſaid Replication above pleaded by the ſaid *William* and *Henry Lindſey*, in the Manner and Form aforeſaid, and the Matters therein contained [*ſo the Precedent goes on with a* Demurrer, *and a* Joinder *in* Demurrer, *which we think needleſs here to inſert*].

2 Brown Entr. 29.

A Replication to a Plea of **Infancy**, pleaded to an Action brought for Goods ſold.

(14.) ——— Ought not to be precluded, *&c.* becauſe he ſaith, that the ſaid Wares bought by the ſaid (*Defendant*) of the ſaid Plaintiff, at the Requeſt of the ſaid (*Defendant*) in the Manner aforeſaid, were bought for the neceſſary Cloathing of the ſaid (*Defendant*) and one *F.* then Wife of the ſaid (*Defendant*) ſuitable to their Degree; and this he is ready to verify, *&c.*

A Rejoinder and **Iſſue** upon the **Replication.**

(15.) And the ſaid *D.* rejoins, that the ſaid Wares bought by him in the Manner aforeſaid, were not bought for the neceſſary Apparel and Cloathing of the Bodies of the ſaid *D.* and the ſaid *F.* his Wife, as the ſaid (*Plaintiff*) hath above alledged

alledged in his ſaid Replication; and of this he puts himſelf upon the Country; and the ſaid *(Plaintiff)* does likewiſe the ſame. Bro. Red. 85. Bro. Red. 104.

The Book ſays Judgment was given for the Plaintiff.

(16.) And the ſaid *B.* by *C. D.* his Attorney, comes and defends the Force and Injury, when, &c. and *proteſting*, that the ſeveral Promiſes and Undertakings ſet forth in the Declaration, are for one and the ſame, and not a different Cauſe of Action, the ſaid *B.* for his Defence pleads, that as to the receiving the ſaid *J.* Wife of the ſaid *B.* and of the ſaid *J.* her Servant by him the ſaid *A.* into his Houſe, and finding and providing them with Meat, Drink, Waſhing and Lodging, Firing, and other Neceſſaries for the Support and Maintenance of them the ſaid *E.* and *J.* from [**ſuch a Day, until*, &c.] that he did not undertake in ſuch Manner and Form, as the ſaid *A.* hath above declared againſt him, and thereof he puts himſelf upon the Country, and the ſaid *A.* doth likewiſe the ſame: And as to the Reſidue of the Time for which the ſaid *A.* is ſuppoſed to have received the ſaid *E.* and *J.* into his Houſe, and to have found and provided for them Meat, Drink, Waſhing, Lodging, Firing, and other Neceſſaries for the Support and Maintenance of them the ſaid *E.* and *J.* [*from ſuch a Day to ſuch a Day*] in the ſaid Declaration above mentioned, the ſaid *B.* ſaith, that the ſaid *A.* ought not to have or maintain his ſaid Action; for that he ſaith, that before the ſaid Day, &c. to wit, [*ſuch a Day*] at, &c. the ſaid *E.* the Wife of the ſaid *B.* of her own Accord, and without any reaſonable Cauſe, and without the Conſent, and againſt the Will of him the ſaid *B.* abſented herſelf, and from the Company and Society of him the ſaid *B.* withdrew herſelf, and eloped; and that he the ſaid *B.* did thereupon then and there requeſt and very much ſollicit her to return, and cohabit with him the ſaid *B.* but the ſaid *E.* never-

A Plea to an Action for Neceſſaries found for the Wife, of **Non Aſſumpſit** as to Part of the Time, and an Elopement of the Wife as to the Reſidue.

* Mentioning the Time to which you apply the General Iſſue.

The Elopement.

nevertheleſs denying and refuſing to return and cohabit with him the ſaid *B.* thereupon the ſaid *B.* afterwards, to wit, [*ſuch a Day*] at *L.* aforeſaid, publickly and openly declared, ſignified and gave Notice to all Perſons whatſoever, that he the ſaid *B.* would in no wiſe pay, or in any Sort ſatisfy, or cauſe to be ſatisfied any Sum or Sums of Money whatſoever, to any Perſon or Perſons, who ſhould truſt or give Credit to the ſaid *E.* for any Merchandizes, Goods, or Sums of Money whatſoever, of which ſaid Premiſſes the ſaid *A.* then and there, to wit, the ſaid Day of, *&c.* at *L.* aforeſaid had Notice; and this he is ready, *&c.* [*and conclude as in other Replications*].

Note, *That under the Precedent, 'tis ſaid, that the Plaintiff* demurred, *and thereupon the Defendant pleaded the* General Iſſue.

A Plea of Non Aſſumpſit to Part, Tender to the reſt. Mod. Intr. 143.

(17.) And the ſaid *B.* by *J. P.* his Attorney, comes and defends the Force and Injury, when, *&c.* and as to the ſecond Promiſe and Undertaking in the ſaid Declaration above ſuppoſed to have been made, he ſaith, that he did not undertake in ſuch Manner and Form as the ſaid *A.* above declares againſt him; and of this he puts himſelf upon the Country, and the ſaid *A.* doth likewiſe the ſame: And as to the ſaid firſt Promiſe and Undertaking above ſuppoſed to have been made, the ſaid *B.* ſaith, that the ſaid *A.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that he the ſaid *B.* after the Time of making that Promiſe and Undertaking, and before the Exhibiting the Bill of the ſaid *A.* to wit, on the 20th Day of *April*, in the 6th Year of the Reign of his ſaid preſent Majeſty at *C.* aforeſaid, in the County aforeſaid, tender'd the ſaid 20 *l.* to the ſaid *A.* for the thirty Yards of Cloth, in that Promiſe and Undertaking above mentioned; which ſaid 20 *l.* the ſaid *A.* then and there abſolutely refuſed to receive; and the ſaid *B.* further ſaith, that he at all Times ſince the ſaid 20th Day of *April*,

Tender.

in the ſaid 6th Year of his ſaid Majeſty's Reign, hath been ready, and ſtill is ready to pay the ſaid 20 *l.* to the ſaid *A.* and now brings the ſaid 20 *l.* into Court, to be paid to the ſaid *A.* if he is willing to accept of the ſame; and this he is ready to verify, *&c.*

(18.) And the ſaid *A.* as to the ſaid Plea of the ſaid *B.* above pleaded, as to the ſaid Sum of 20 *l.* replies, that he, for any Thing before alledged in the ſaid Plea, ought not to be precluded from having his ſaid Action againſt the ſaid *B.* becauſe he ſaith, that the ſaid *B.* did not tender the ſaid 20 *l.* to him the ſaid *A.* in the Manner and Form as the ſaid *B.* hath above in pleading alledged; and this he prays may be enquired of by the Country; and the ſaid *B.* doth the ſame likewiſe: Therefore, as well to try that Iſſue, as the other Iſſue between the ſaid Parties likewiſe joined, let a Jury, *&c.*

A Replication and Iſſue.

K. B.

(19.) ——— When, *&c.* And as to the laſt Promiſe in the ſaid Declaration above ſuppoſed to have been made, the ſaid *D.* pleads, that he did not undertake in the Manner and Form as the ſaid *A.* above complains againſt him; and of this he puts himſelf upon the Country, *&c.* And as to the ſaid firſt Promiſe and Undertaking in the ſaid Declaration, ſuppoſed to have been made, the ſaid *D.* ſaith, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that true it is, that he the ſaid *D.* was indebted to him the ſaid *A.* in the ſaid 44 *s.* for the ſaid Wood in the Manner and Form as the ſaid *A.* hath above declared againſt him, but the ſaid *D.* further ſaith, that he the ſaid *D.* after that Promiſe and Undertaking was made, and before the Day of the Plaintiff's Exhibiting his ſaid Bill, to wit, [*on ſuch a Day and Year*] at [*ſuch a Place*] paid to the ſaid *A.* 28 *s.* Part of the ſaid 44 *s.* which ſaid 28 *s.* he the ſaid Plaintiff received

A Plea of Non Aſſumpſit as to the laſt Promiſe, Satisfaction as to Part of the firſt, and a Tender of the Reſidue. Hanſ. Entr. 80.

ceived; and that he the ſaid *D.* after that Promiſe and Undertaking, and before the Day of the Plaintiff's Exhibiting his ſaid Bill, to wit, [*on ſuch a Day and Year*] at aforeſaid, was ready, and offered to pay to the Plaintiff the ſaid 16 *s.* Reſidue of the ſaid 44 *s.* and that he always after the ſaid [*the Day and Year laſt mentioned*] hitherto was ready, and yet is ready to pay the ſame 16 *s.* to the ſaid *A.* to wit, at aforeſaid, and now brings the ſaid 16 *s.* here into this Court, to be paid to the ſaid *A.* if he will receive the ſame of him the ſaid *D.* and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *A.* ought to have or maintain his ſaid Action againſt him, *&c.*

Replication, a Similiter to Part, and a Denial of the Tender to the reſt.

(20.) And the ſaid *A.* as to the ſaid Plea of the ſaid *D.* as to the ſaid laſt Promiſe and Undertaking in the ſaid Declaration above ſpecified, by him the ſaid *D.* above pleaded in the Manner and Form aforeſaid, likewiſe puts himſelf upon his Country: And as to the ſaid Plea, as to the ſaid firſt Promiſe and Undertaking, the ſaid *A.* replies, that he ought not to be barred [or *precluded*] of having his ſaid Action, becauſe he ſaith, that the ſaid Defendant did not tender to him the ſaid 16 *s.* in ſuch Manner and Form as the ſaid *D.* hath above in Pleading alledged; and this he prays may be inquired of by the Country: Therefore as well to try that Iſſue, as the other Iſſue firſt above likewiſe joined between the ſaid Parties, let a Jury come, *&c.*

Non ſum Informatus to one Promiſe, and Non Aſſumpſit, as to the other.

(21.) And the ſaid *C.* by *Robert Martin* his Attorney, comes and defends the Force and Injury, when, *&c.* And as to the firſt Promiſe and Undertaking in the Declaration mentioned, the ſaid Attorney ſaith, that he is not inſtructed by the ſaid *C.* his Client, to give any Anſwer for the ſaid *C.* to the ſaid *A.* in his Action aforeſaid, nor doth he ſay anyThing further thereto; whereby the ſaid *A.* remains againſt the ſaid *C.* undefended

fended therein; for which Reaſon the ſaid *A.* ought to recover his Damages againſt the ſaid *C.* occaſioned by the Non-performance of the aforeſaid firſt Promiſe: And as to the ſecond Promiſe in the Declaration aforeſaid mentioned, the aforeſaid *C.* ſaith, that the ſaid *C.* did not undertake in ſuch Manner and Form as the ſaid *A.* hath above complained againſt him; and of this he puts himſelf upon the Country; and the ſaid *A.* doth likewiſe the ſame: And becauſe it is convenient and neceſſary, that there ſhould be but one Taxation of the Damages occaſioned by the Premiſſes; therefore let the Writ of Inquiry of Damages be ſtaid, until the Iſſue above joined between the ſaid Parties ſhall be determined: Therefore as well to try the Iſſue aforeſaid above joined between the Parties aforeſaid, as to inquire what Damages the ſaid *A.* hath ſuſtain'd in this Behalf, the Sheriff is commanded, *&c.*

(22.) And the ſaid *J.* by *T. Hanſard* his Attorney, comes, *&c.* and as to the 45 *l.* Part of the Debt, which the ſaid *S.* demands of him the ſaid *J.* by Virtue of the ſaid firſt Promiſe and Undertaking, he pleads, that he did not undertake in the Manner and Form as the ſaid *J.* hath above declared againſt him; and thereof he puts himſelf upon the Country, and the ſaid *S.* doth the like: And as to the ſaid 46 *l.* which the ſaid *S.* above demands of him the ſaid *J.* by Virtue of the ſaid ſecond Promiſe and Undertaking for the Yarn ſuppoſed to have been delivered by the ſaid *S.* to the ſaid *J.* the ſaid *J.* pleads, that the ſaid *S.* ought not to have or maintain his ſaid Action thereof againſt him; for that he ſaith, that at the Time when the ſaid Yarn is ſuppoſed to have been delivered to the ſaid *J.* by the ſaid *S.* he the ſaid *S.* was indebted to the ſaid *J.* in [*ſo much*] of lawful Money of *Great Britain* for Bolt-Ropes, to him the ſaid *S.* by him the ſaid *J.* before that Time ſold and delivered; and that the ſaid *S.* at the Time when, *&c.* at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, delivered

A Plea as to the firſt Promiſe Non Aſſumpſit, and as to the ſecond, that he paid ſo much Money, and gave ſo many Goods in Satisfaction thereof. Hanſ. 64.

to the ſaid *J.* the ſaid Yarn, as well in Satisfaction of the ſaid Debt due to the ſaid *J.* as aforeſaid, as for other Bolt-Ropes to be delivered to the ſaid *S.* and further Satisfaction to be made to the ſaid *S.* for the ſame; and that he the ſaid *J.* afterwards, to wit, the 6th Day of *October*, in the Year of our Lord 1730. aforeſaid at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, paid to the ſaid *S.* 19*l.* 18*s.* 6*d.* of lawful Money of *Great Britain*, in further Satisfaction of the ſaid Yarn; and that he the ſaid *J.* then and there paid and delivered to the ſaid *S.* in full Satisfaction of the ſaid Yarn, as many other Bolt-Ropes as amounted to the full Value of the Yarn aforeſaid; which ſaid 19*l.* 18*s.* 6*d.* together with the Bolt-Ropes laſt mentioned, paid and delivered to the ſaid *S.* in the Manner aforeſaid, he the ſaid *S.* then and there accepted from the ſaid *J.* in full Payment and Satisfaction of the ſaid Yarn; and this the ſaid *J.* is ready, &c.

Five thouſand Pounds of Copper pleaded in Satisfaction of ſeveral Promiſes.

(23.) ——— When, &c. ——— And pleads, that the aforeſaid *H.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that true it is, that he did undertake in the Manner and Form as the ſaid *H.* hath above ſuggeſted in his ſaid Declaration, but the ſaid *T.* further ſaith, that after the Making of the ſeveral Promiſes and Undertakings above ſuppoſed to be made, (to wit) on the third Day of *January*, in the Year of our Lord 1714. aforeſaid, he the ſaid *Thomas* at *London* aforeſaid, in the Pariſh and Ward aforeſaid, did give and deliver to the ſaid *H.* five thouſand Pounds of Copper, in full Satisfaction and Diſcharge of the ſeveral Promiſes and Undertakings aforeſaid, and of all the Monies mentioned therein; which ſaid five thouſand Pounds of Copper, he the ſaid *H.* then and there had and received from the ſaid *T.* in full Satisfaction and Diſcharge of the ſeveral Promiſes and Undertakings aforeſaid, and of all the Monies therein mentioned; and this he is ready to verify: Wherefore he prays Judgment, whether

ther the ſaid *H.* ought to have or maintain his ſaid Action againſt him, &c.

(24.) And the ſaid *H.* replies, that he ought not to be precluded from having his ſaid Action againſt him, notwithſtanding any Thing above alledged by the ſaid *T.* in his Plea aforeſaid, becauſe, proteſting, that the aforeſaid *T.* did not give and deliver the foreſaid five thouſand Pounds of Copper, in full Satisfaction and Diſcharge of the ſeveral Promiſes and Undertakings, and of all the Money therein mentioned, for Plea the ſaid *H.* ſaith, that he had not, nor received of the ſaid *T.* the ſaid five thouſand Pounds of Copper, in full Satisfaction and Diſcharge of the ſeveral Promiſes and Undertakings, and of all the Monies therein mentioned, in the Manner and Form as the ſaid *T.* above hath alledged; and this he prays may be inquired of by the Country, &c. Replication.

B. R.

(25.) And the ſaid *C.* by *J. P.* his Attorney, comes and defends the Force and Injury, when, &c. and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that after the Making of the ſaid ſeveral Promiſes and Undertakings in the ſaid Declaration above ſpecified, to wit, on the firſt Day of *September*, in the 9th Year of the Reign of his preſent Majeſty, at *N.* aforeſaid, in the County aforeſaid, the ſaid *A.* and *C.* ſtated Accounts between them, concerning all and every Sum and Sums of Money before that Time due from the ſaid *C.* to the ſaid *A.* and then unpaid; upon which Account only the ſaid *C.* was then and there found to be in Arrear to the ſaid *A.* in the Sum of 10*l.* of good and lawful Money of *Great Britain*, and no more; which ſaid 10*l.* the ſaid *C.* ever ſince the ſaid Account was ſo ſtated as aforeſaid, hath been and ſtill is ready to pay to the ſaid *A.* (to wit) at *N.* aforeſaid in the County aforeſaid; and in order to pay the ſaid 10*l.* A Plea, that Plaintiff and Defendant accounted, and 10 l. was due, quas profert in Cur'. 2 Mo. Intr. 143.

to the ſaid *A.* he here brings the ſame into Court; and this he is ready to verify: Wherefore he prays Judgment, whether for this Cauſe the ſaid *A.* ought to have or maintain his ſaid Action againſt him, *&c.*

Plene Adminiſtravit.

(26.) ——— When, *&c.* and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him the ſaid *B.* becauſe he ſaith, that he at the Time of Exhibiting the ſaid Bill had fully adminiſter'd all and ſingular the Goods and Chattels that were of the ſaid *C.* at the Time of his Death in his Hands, to be adminiſter'd; and that he hath not, nor had at the Time of Exhibiting the ſaid Bill, or at any Time ſince, any Goods or Chattels that were of the ſaid *C.* at the Time of his Death in his Hands to be adminiſter'd; whereby to ſatisfy the ſaid *A.* his Damages aforeſaid; and this he is ready to verify, *&c.*

Replication and Iſſue.

(27.) ——— That he ought not to be precluded from having his ſaid Action againſt him the ſaid *B.* becauſe he ſaith, * that the ſaid *B.* on the

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* Note; *In this and in all other Pleas of this Nature, where the Time of the Filing of the Bill, or of the Suing out of the Original, is not expreſſed in the Plea or Replication, there the Bill or Original muſt be produced in Evidence,* i. e. *a Copy of the ſame ſworn and examined upon the File; but when the Plaintiff ſets forth a Day of the Suing out of the Original, or of Exhibiting the Bill; and that Day is agreed on by the Parties in Pleading, there the Original or Bill need not be produced, and the Manner of pleading it is thus:* Becauſe he ſaith, that the Bill aforeſaid of the ſaid *A.* was exhibited in this Court on *the* 10*th Day of* May, *in the* 7*th Year of the Reign of his ſaid preſent Majeſty*; and that on the ſaid Day of Exhibiting the Bill aforeſaid, he the ſaid *C.* had divers Goods, *&c. as in the former, only inſtead of ſaying,* and this the ſaid *A.* prays may be inquired of by the Country, *he muſt verify his Plea with this Concluſion*; and this he is ready to verify: Where-

the Day of Exhibiting the ſaid Bill of him the ſaid *A.* that is to ſay, *on the 5th Day of* June, *in the 6th Year of the Reign of his ſaid preſent Majeſty*, had divers Goods and Chattels that were of the ſaid *C.* at the Time of his Death, in his Hands to be adminiſter'd, to the Value of the Damages aforeſaid, whereby he might have ſatisfy'd the ſaid Damages to the ſaid *A.* to wit, at *C.* aforeſaid in the County aforeſaid; and this

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Wherefore, he prays Judgment, and his Damages occaſion'd by the Premiſſes to be adjudged to him, *&c.* *And to this the Defendant muſt rejoin, and deny that he had Goods and Chattels at the Day of Exhibiting the Bill aforeſaid, and then conclude to the Country; and the reaſon of this Difference is, becauſe the Plaintiff ought not to conclude to the Country, but where he denies the Subject Matter of the Defendant's Plea, without any new Allegation that may alter the Nature of the Defendant's Defence; as to ſay, that the Defendant had Aſſets at the Time of Filing the Bill, which leaves the Time of Filing of the Bill at large, and to be produced in Evidence; but if the Plaintiff might alledge the Bill to have been filed on the* 10th *Day of* May, *and conclude to the Country, that would take away the Benefit of a juſt Defence, which the Defendant might have, and conclude him from making Uſe of it, by a Matter alledged by the Plaintiff, which might be falſe: For ſuppoſe that the Truth was, that the Plaintiff brought his Action upon the* 10th *Day of* June, *and at that Time the Defendant had fully adminiſter'd the Effects of the Inteſtate, but* upon the 10th Day of *May, which was a Month before he had Aſſets ſufficient to pay the Plaintiff's Claim, but knew nothing of it; if therefore the Plaintiff ſhould be at Liberty to alledge his Bill to have been filed the* 10th Day of *May, at a Time when the Defendant had Aſſets, which was falſe, and might conclude to the Country, then the Plaintiff would by a falſe Allegation make his Caſe to be better than in Truth it is, and work a Wrong to an innocent Man: Therefore the Plaintiff, if he will alledge in his Replication, a Day when he filed his Bill, the Defendant may either agree with the Plaintiff, that the Bill was filed on that Day; and that at that Time he had not Aſſets, or he may alledge the Plaintiff's Bill to have been filed of another Day, and then ſay, that he had not Aſſets at that Day, which may be true, and a good and juſt Defence.*

he prays may be inquired of by the Country; and the ſaid *B.* doth likewiſe the ſame: Therefore, &c.

C. B.

A Plea, that Defendant repaired a Houſe, &c. according to a parol Agreement between him and the Plaintiff. Hanſ. Entr. 41.

(28.) ——— Becauſe, proteſting, that he made no ſuch Promiſe in the Manner and Form as the ſaid *H. B.* above complains againſt him; proteſting alſo, that the Houſe, Orchard, Gardens, Courts, Backſides, Dovehouſe and Outhouſes, Walks and Grounds in the ſaid Declaration mentioned, at the Time of the Agreement above ſuppoſed to have been made, were not in good and ſufficient Repair, and well kept up and fenced, as the ſaid *H.* by his Bill and Declaration aforeſaid doth above alledge, pleads by Way of Defence, that he at the End of the ſaid five Years, left and yielded up to the ſaid *H.* all and ſingular the ſaid Meſſuages, Houſe, Orchard, Gardens, Backſides, Courts, Dovehouſe and Outhouſes, Walks and Grounds in as good Repair, in all Reſpects, as they were in at the ſaid Time of the ſaid Agreement above ſuppoſed to have been made, according to the Form and Effect of his Promiſe; and this he is ready to verify, &c.

Replication,

(29.) ——— Becauſe he ſaith, that he the ſaid *D.* did not at the ſaid End of the ſaid Term of five Years leave and yield up to him the ſaid *H.* all and ſingular the ſaid Meſſuages, Houſe, Orchard, Gardens, Backſides, Dovehouſe and Outhouſes, Walks and Grounds in as good Repair, in all Reſpects, as they were in at the Time of Making of the ſaid Agreement, in the Manner and Form as the ſaid *D.* hath above alledged; and this he prays may be inquired of by the Country; and the ſaid *D.* doth likewiſe the ſame: Therefore, &c.

Iſſue.

A Plea of infra Etat'.

(30.) ——— When, &c. and pleads, that the ſaid *C. D.* ought not to have or maintain his Action thereof againſt him, becauſe he ſaith, that

that he the ſaid *A. B.* at the Time of Making of the ſaid ſeveral Promiſes was under the Age of twenty-one Years; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *C. D.* ought to have or maintain his ſaid Action thereof againſt him, &c.

Replication, for Neceſſaries ſuitable to Defendant's Degree.

(31.) And the ſaid *C. D.* replies, that he by any Thing by the ſaid *A. B.* above in Pleading alledged, ought not to be barred from having his ſaid Action againſt him the ſaid *A. B.* becauſe he ſaith, that the ſaid 30 *l.* by him expended and laid out for the ſaid *A. B.* and the ſaid Taylor's Work done and performed by him the ſaid *C. D.* for the ſaid *A. B.* together with the Materials and Neceſſaries found and provided by him the ſaid *C. D.* for the ſaid *A. B.* in the Manner aforeſaid, and uſed in and about that Work, were expended and laid out, done and performed, found and provided by him the ſaid *C. D.* at *London* aforeſaid, in the Pariſh and Ward aforeſaid, for the neceſſary Apparel and Clothing of him the ſaid *A. B.* according to his Degree; and this he is ready to verify: Wherefore he prays Judgment and his ſaid Damages, by reaſon of the Premiſſes, to be adjudged to him, &c.

Rejoinder, that the Money laid out, and Clothes, &c. were not Neceſſaries, and Iſſue thereon.

(32.) And the ſaid *A. B.* rejoins, that the ſaid 30 *l.* by the ſaid *C. D.* expended and laid out, and the ſaid Taylor's Work by him the ſaid *C. D.* done and performed, together with the Materials and Neceſſaries found and provided by the ſaid *C. D.* for the ſaid *A. B.* and uſed in and about that Work, were not for the neceſſary Apparel and Clothing of him the ſaid *A. B.* in Manner and Form as the ſaid *C. D.* hath above in his Replication alledged; and of this he puts himſelf upon the Country, and the ſaid *C. D.* doth the ſame likewiſe: Therefore, &c.

Defendant pleads, that Teſtator and he accounted together, that 12 l. was due to Teſtator, 10 l. of which Defendant paid to him in his Life-time; and that he tender'd the remaining 40 s. to the Executrix, and brings the 40 s. into Court. 3 Inſtr. Cl. 323.

(33.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that after the Time of the ſaid ſeveral Promiſes and Undertakings, ſuppoſed by the Declaration to have been made by him the ſaid *R.* to the ſaid Teſtator in his Life-time, to wit, [*ſuch a Day and Year, and at ſuch a Place*] the ſaid Teſtator in his Life-time, and the ſaid *R.* accounted together of and concerning all Sum and Sums of Money then due, and owing by him the ſaid *R.* to the ſaid Teſtator, and remaining unpaid as well for the ſaid four Cows in the ſaid Declaration mentioned, as for all other Cattle by him the ſaid Teſtator before that Time ſold and delivered to him the ſaid *R.* and upon ſuch Account the ſaid *R.* was found in Arrear to the ſaid Teſtator, in his Life-time, in 12 *l.* of lawful Money of *Great Britain*; and that he the ſaid *R.* afterwards, to wit [*ſuch a Day and Year, at ſuch a Place*] paid to the ſaid Teſtator in his Life-time, 10 *l.* Part of the ſaid 12 *l.* ſo due to the ſaid Teſtator in his Life-time upon the ſaid Account: And the ſaid *R.* further ſaith, that after the Death of the ſaid Teſtator, and before the Day of Suing forth of the Original Writ of the ſaid Plaintiffs, to wit, [*ſuch a Day and Year, at ſuch a Place*] he the ſaid *R.* offered to pay 40 *s.* Reſidue of the ſaid 12 *l.* to the ſaid Executrix whilſt Sole, which ſaid 40 *s.* ſhe the ſaid Executrix abſolutely refuſed to receive of the ſaid *R.* and that he the ſaid *R* always after the ſaid Day of hitherto, hath been ready, and yet is ready to pay the ſaid 40 *s.* that is to ſay, to the ſaid Executrix whilſt Sole, and to the Plaintiffs ſince the Marriage had between them; and the ſaid *R.* brings the ſaid 40 *s.* here into Court ready to be paid to the ſaid Plaintiffs; and this he is ready to verify: Wherefore he prays Judgment, whether the Plaintiffs ought to have or maintain their Action thereof againſt him: With this, that the ſaid *R.* avers, that the ſaid Teſtator,

Averment, that Teſtator ſold Defendant no Cattle after the Account ſtated.

in

in his Life-time, did not ſell or deliver any Cows, or other Cattle whatſoever, to him the ſaid *R.* after the Account was ſo as aforeſaid ſtated between him and the ſaid Teſtator.

(34.) And the ſaid Plaintiffs ſay, that by any Thing before alledged by the ſaid *R.* they ought not to be precluded from having of their ſaid Action, becauſe **Protesting**, that the ſaid *R.* did not pay the ſaid 10 *l.* above ſpecified in the ſaid Defendant's Plea, to the ſaid Teſtator in his Life-time; and **Protesting** alſo, that the ſaid *R.* did not offer to pay the aforeſaid 40 *s.* after the Death of the ſaid Teſtator, to the ſaid Executrix whilſt Sole, as the ſaid *R.* hath above in Pleading alledged; **For Plea** they as before ſay, that the ſaid *R.* did undertake in the Manner and Form as they have above complained againſt him; **Without that**, that the ſaid Teſtator, in his Life-time, and the ſaid *R.* accounted together, in the Manner and Form as the ſaid *R.* hath above alledged; and this they are ready to verify: Wherefore they pray Judgment and their Damages by reaſon of the Premiſſes to be adjudged to them, *&c.*

Replication, Plaintiff proteſting, that Defendant did not pay the 10 l. or tender the 40 s.

For Plea, that Defendant did undertake as in the Declation.

And **Traverſe** the Accounting.

(35.) And the ſaid *R.* as before, ſaith, that the ſaid Teſtator in his Life-time, and he the ſaid *R.* did account together in the Manner and Form as he the ſaid *R.* hath above alledged, to wit, at [*the Place aforeſaid*] and thereof he puts himſelf upon the Country; and the ſaid Plaintiffs do the ſame likewiſe: Therefore, *&c.*

Rejoinder, that Teſtator and Defendant did Account, and Iſſue thereon.

Iſſue.

(36.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *A.* at the Feaſt-Day of the Birth of our Lord Chriſt, to wit, [*ſuch a Day and Year*] at *K.* aforeſaid, was ready and offered the ſaid *D.* to put him in the quiet and peacable Poſſeſſion of the ſaid Shop in *K.* aforeſaid, which he

Defendant pleads to an Action upon an **Aſſumpſit**, for not delivering Poſſeſſion of a Shop, that he was **ready** and **offered** to deliver the Poſſeſſion according to his Undertaking, but Plaintiff refuſed to accept it.

the ſaid *A.* hath had and occupied in the ſaid Manner alledged in the ſaid Declaration; and that he the ſaid *D.* might have had and enjoy'd the ſame Shop for and during the ſaid Term of five Years then next following after the ſaid Feaſt-Day of the Birth of our Lord Chriſt, without any Diſturbance whatſoever, according to the Promiſe and Undertaking of him the ſaid *A.* And the ſaid *A.* further ſaith, that the ſame Day and Year aforeſaid, at *K.* aforeſaid, the ſaid *D.* refuſed to be put in the quiet and peaceable Poſſeſſion of the ſaid Shop by him the ſaid *A.* and this he is ready to verify, *&c.*

A Plea of **Non Aſſumpſit** to the firſt Promiſe; to the ſecond, that the Plaintiff by Agreement delivered the Goods in the Name of a third Perſon to the Defendant, in **Satisfaction** of a Debt due to him from ſuch third Perſon. 3 Inſtr. Cl. 316.

(37.) And the ſaid *T. B.* by *A. C.* his Attorney, comes and defends the Force and Injury, when, *&c.* and as to the 16*l.* 9*s.* 8*d.* contained in the ſaid firſt Promiſe and Undertaking in the Declaration above, he pleads, that he the ſaid *T.* did not undertake in the Manner and Form as the ſaid *W.* above complains againſt him; and thereof he puts himſelf upon the Country, and the ſaid *W.* doth likewiſe the ſame; and as to the 11*l.* 10*s.* 4*d.* contained in the ſaid ſecond Promiſe and Undertaking above mentioned, in the ſaid Declaration for Goods, Wares, and Merchandizes above ſuppoſed to have been ſold and delivered to the ſaid *T.* he ſaith, that the ſaid *W.* ought not to have or maintain his Action thereof againſt him, becauſe he ſaith, that upon the ſaid 12th Day of *November*, in the Year of our Lord 1721. upon which Day the ſaid Goods, Wares and Merchandizes are ſuppoſed to have been ſold and delivered to him the ſaid *T.* one *J. P.* of *Wapping* in the Pariſh of *Stepney*, in the County of *Middleſex*, Sail-maker, was indebted to him the ſaid *T.* in 11*l.* 11*s.* of lawful Money of *Great Britain*, for Bolt-Ropes before that Time ſold and delivered by him the ſaid *T.* to the ſaid *J. P.* and being ſo indebted the ſaid *J. P.* had Diſcourſe with the ſaid *W.* concerning the Sale and Delivery of the ſaid Goods, Wares and Merchandizes to the ſaid *T.* in Satisfaction of his ſaid Debt; whereupon

after-

afterwards, to wit, the ſame 12th Day of *November*, in the Year of our Lord 1721. at *London* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *W.* by Agreement made between him and the ſaid *J. P.* delivered the ſaid Goods, Wares and Merchandizes to the ſaid *T.* in Satisfaction of his ſaid Debt, without any Condition, and without any Promiſe or Undertaking made by him the ſaid *T.* to pay to the ſaid *W.* ſo much Money as he deſerved to have for the ſame, as the ſaid *W.* hath by his ſaid Declaration above alledged; and this the ſaid *T.* is ready to verify, *&c.*

(38.) ——— When, *&c.* and the ſaid *D.* proteſting, that the aforeſaid ſeveral Promiſes and Undertakings in the ſaid Declaration above ſpecified, are for one and the ſame, and not different Cauſes of Action, for Plea, as to the receiving of the ſaid *S.* the Wife of the ſaid *D.* and of the ſaid *R. K.* Servant of the ſaid *S.* by him the ſaid *W. T.* into his Houſe, and alſo finding and providing Meat, Drink, Waſhing, Lodging, Fire, and other Neceſſaries for the Suſtenance and Maintenance of the ſaid *S.* and *J.* from [*ſuch a Day and Year, until*, &c.] he the ſaid *D.* ſaith, that he did not undertake in the Manner and Form as the ſaid *W.* hath above complained againſt him, *&c.* And as to the Reſidue of the Time for which the ſaid *W.* is ſuppoſed to have received the ſaid *S.* and *J.* into his Houſe; and alſo to have found and provided Meat, Drink, Waſhing, Lodging, Fire and other Neceſſaries for the Suſtenance and Maintenance of them the ſaid *S.* and *J.* from the Day of until in the ſaid Declaration above ſpecified, the ſaid *D.* ſaith, that the ſaid *W.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that before the ſaid Day of to wit, [*ſuch a Day and Year*] at the aforeſaid *S.* the Wife of the ſaid *D.* of her own Accord, and without any reaſonable Cauſe, and

Bar for Meat and Drink, &c. found for the Defendant's Wife, as to Part of the Time Non Aſſumpſit, and as to the Reſidue, that the Wife eloped, and Defendant gave Publick Notice, that no one ſhould credit her. 3 Inſtr. Cl. 318.

and without the Conſent, and contrary to the Will of the ſaid *D.* abſented herſelf and eloped from the Company and Society of him the ſaid *D.* and that he the ſaid *D.* thereupon then and there earneſtly requeſted, and very much ſollicited her the ſaid *S.* to return and cohabit with him the ſaid *D.* notwithſtanding which the ſaid *S.* refuſed and denied to return and cohabit with him the ſaid *D.* Whereupon afterwards, to wit, [*ſuch a Day and Year*] at aforeſaid, he the ſaid *D.* publickly and openly declared, ſignified and gave Notice to all Perſons whatſoever, that he the ſaid *D.* would in no wiſe pay or ſatisfy, or cauſe to be ſatisfied, any Sum or Sums of Money to any Perſon or Perſons whatſoever, who ſhould truſt or give Credit to the ſaid *S.* for any Merchandize, Goods, or Sums of Money whatſoever; of which Premiſſes the ſaid *W.* then and there, to wit, [*ſuch a Day and Year*] at aforeſaid had Notice; and this he is ready to verify, *&c.*

In Caſe for Cattle ſold, Defendant pleads, that he paid Part of the Money agreed for, and would have paid the Reſidue, if the Plaintiff would have delivered the Cattle.
3 Inſtr. Cl. 317.

(39.) ——— Ought not to have his Action, becauſe he ſaith, that true it is, that he the ſaid *S.* did undertake in the Manner and Form as the ſaid *M.* by his ſaid Declaration above ſuppoſes; and that the ſaid *M.* likewiſe delivered to him the ſaid *S.* the ſaid three Oxen, in the ſaid Declaration mentioned: But the ſaid *S.* further ſaith, that he paid to the ſaid *M.* 15 *l.* of lawful Money of *Great Britain*, Part of the ſaid 30 *l.* for the ſaid Oxen; and that after the Promiſe and Undertaking of him the ſaid *S.* made in the Manner aforeſaid, he was ready to pay the Sum of 15 *l.* Reſidue of the ſaid 30 *l.* if the ſaid *M.* would have delivered the ſaid Cows on or before the ſaid Feaſt of in the ſaid Declaration mentioned, which ſaid Cows the ſaid *S.* requeſted him the ſaid *M.* before the ſaid Feaſt, to deliver to him the ſaid *S.* according to the Agreement aforeſaid, but the ſaid *M.* abſolutely refuſed to deliver the ſaid Cows to him the ſaid *S.* before or upon the ſaid

ſaid Feaſt of Without that, that the ſaid *M.* until and upon the ſaid Feaſt of was ready and offered to deliver the Cows aforeſaid to him the ſaid *S.* as the ſaid *M.* by his ſaid Declaration above ſuppoſes; and this he is ready to verify, &c.

(40.) ——— Ought not to be precluded, &c. ——— becauſe Proteſting, that the ſaid *S.* hath not paid the ſaid 15 *l.* for the ſaid Oxen to him the ſaid *M.* as the ſaid *S.* hath above alledged in his Plea, for Replication, the ſaid *M.* as before ſaith, that he the ſaid *M.* from the Time of Making of the aforeſaid Promiſe and Undertaking to him the ſaid *S.* until and upon the ſaid Feaſt of was ready and offered to deliver the Cows aforeſaid to the ſaid *S.* as he by his ſaid Declaration above ſuppoſes; and this he prays may be inquired of by the Country; and the ſaid *S.* doth likewiſe the ſame: Therefore, &c.

Replication, Proteſting, that Plaintiff did not pay the 15 l. Plaintiff **Replies,** that he was ready and offered to deliver the Cows.

Iſſue thereupon.

Pleas to Actions for Words.

(41.) And the ſaid *M.* by *H. V.* &c. and pleads, that the ſaid *W. B.* ought not to have his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *Michael*, before the ſaid Time when the ſaid *Engliſh* Words above ſuppoſed in the ſaid Declaration to have been ſpoken and publiſhed (to wit) on the 27th Day of *May*, in the 7th Year aforeſaid, he was Servant to *W. M.* Eſq; and that the ſaid *W. B.* [*ſuch a Day and Year*] having a Diſcourſe with the ſaid *M.* of and concerning the ſaid *William*, he compared himſelf to be as juſt and honeſt a Man as his Maſter [*meaning the ſaid* W. M.) whereupon the ſaid *M.* at the ſaid Time, when, &c. ſpoke, repeated and publiſhed theſe following *Engliſh* Words of the ſaid *W. B.* (to wit) *That cannot be, for my Maſter* [meaning the ſaid *W. M.*] *did*

A **Plea** of Speaking other Words than thoſe in the Declaration, with a Traverſe of Speaking 'em.

Alledging the Words ſpoken

A Traverſe of the Words in the Declaration.

did never ſteal Sheep and carry them to Mevageſey: Without this, That the ſaid *M.* at the ſaid Time when, &c. ſpoke of the ſaid *W. B.* the *Engliſh* Words above ſpecified in the ſaid Declaration (that is to ſay) *Thou* [meaning the ſaid *W. B.*] *art a Thief*; *and thou* [again meaning the ſaid *W.*] *didſt ſteal Sheep, and carry them* [meaning *ſuch Sheep ſtoln as aforeſaid*] *to* Mevageſey [*meaning a Vill in the County aforeſaid*] in the Manner and Form as the ſaid *W. B.* above complains againſt him; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *W. B.* ought to have or maintain his ſaid Action thereof againſt him, &c.

An Iſſue joined upon the Traverſe.

(42.) And the ſaid *W. B.* replies, that the ſaid *M.* on the ſaid 27th Day of *March*, in the 7th Year aforeſaid, at *Lancaſter* aforeſaid, ſpoke to and of the ſaid *W. B.* the Words aforeſaid (that is to ſay) *Thou* [meaning the ſaid *William*] *art a Thief*; *and thou* [again meaning the ſaid *William*] *didſt ſteal Sheep, and carry them* [meaning ſuch Sheep ſtoln as aforeſaid] *to* Mavageſey, [*meaning a Vill in the County aforeſaid*] as the ſaid *W. B.* doth above ſuppoſe by his Writ and Declaration aforeſaid; and this he prays may be inquired of by the Country; and the ſaid *M.* doth likewiſe the ſame.

2 Brown. Entr. 27.

Plea of Juſtification for Words.

1 Saund. 144.

(43.) ——— And pleads, that the ſaid *J. C.* ought not to have or maintin his ſaid Action thereof, becauſe he ſaith, that long before the ſeveral Times when the ſeveral Words in the ſaid Declaration mention'd are ſuppoſed to have been ſpoken and publiſhed by the ſaid *J. B.* to wit, on the firſt Day of *June*, in the above mentioned Year of the Reign of his preſent Majeſty, the ſaid *J. C.* felonioufly, and as a Felon of our Sovereign Lord the King, ſtole, took and carried away three Ounces of Silver Plate, of the Goods and Chattels of the Warden, Fellows and Scholars of the College called *Wadham College* in the Univerſity and City of *Oxford*,

ford, in the County of the ſame City, at the City of *Oxford* aforeſaid, in the County of the ſame City, within the College aforeſaid there found, for which reaſon the ſaid *Joſeph* afterwards, to wit, the ſame 20th Day of *October*, in the 8th Year of the Reign of his ſaid Majeſty, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, in the Preſence and Hearing of ſeveral of his ſaid Majeſty's faithful Subjects then and there preſent, did ſpeak, aſſert, and with a loud Voice publiſh and proclaim to and of him the ſaid *J. C.* the ſaid Words mentioned in the ſaid Declaration, and here following, to wit, *Look there is a young thieviſh Rogue* [meaning the ſaid *J. C.*] *Didſt ever ſee ſuch a thieviſh Rogue? He* [the ſaid *J. C.* again meaning] *hath ſtolu two hundred Pounds worth of Plate out of* Wadham College [*meaning the College called* Wadham College *in the Univerſity of* Oxford]: And afterwards, to wit, on the 21ſt Day of *October*, in the 8th Year aforeſaid, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *J. B.* likewiſe ſpoke, aſſerted, and with a loud Voice publiſhed and proclaimed to and of the ſaid *J. C.* the other Words in the ſaid Declaration ſpecified, and here following, to wit, *Didſt ever ſee ſuch a thieviſh Rogue?* [meaning the ſaid *J. C.*] *He* [the ſaid *J. C.* again meaning] *ſtole two hundred Pounds worth of Plate out of* Wadham College [*meaning the College called* Wadham College *in the Univerſity of* Oxford] as he for the reaſon aforeſaid well might; and this he is ready, *&c.*

(44.) And the ſaid *J. C.* replies, that he notwithſtanding any Thing alledged by the ſaid *J. B.* in his Plea, ought not to be precluded from having his Action againſt him the ſaid *J. B.* becauſe he ſaith, the ſaid *J. B.* of his own Wrong, without any ſuch Cauſe as is by him above alledged in his ſaid Plea, the ſame 20th of *October*, in the ſaid 8th Year of his ſaid preſent Majeſty, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, ſpoke, aſſerted, and with a loud Replication.

loud Voice, publiſhed and proclaimed of the ſaid *J. C.* the Words in the ſaid Declaration firſt above ſpecified, to wit, *Look there is a young thieviſh Rogue* [meaning the ſaid *J. C.*] *Didſt ever ſee ſuch a thieviſh Rogue? He* [again meaning the ſaid *J. C.*] *hath ſtoln two hundred Pounds worth of Plate out of* Wadham College [*meaning the College commonly called* Wadham College, *in the Univerſity of* Oxford]; and alſo afterwards, to wit, on the ſaid 21ſt Day of *October*, in the 8th Year aforeſaid, at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, the ſaid *J. B.* likewiſe ſpoke, aſſerted, and with a loud Voice publiſhed and proclaimed of the ſaid *J. C.* the ſaid other Words in the ſaid Declaration laſt above mentioned, to wit, *Didſt ever ſee ſuch a thieviſh Rogue?* [meaning the ſaid *J. C.*] *He* [again meaning the ſaid *J. C.*] *ſtole two hundred Pounds worth of Plate out of* Wadham College [*meaning the ſaid College called* Wadham College *in the Univerſity of* Oxford] in the Manner and Form as the ſaid *J. C.* hath above declared againſt him; and this he prays may be inquired of by the Country; and the ſaid *J. B.* doth the like, *&c.*

Iſſue.

B. R.

A Juſtification of Words, to wit, That Plaintiff killed a Man, by giving him Phyſick unskilfully. Mod. Intr. 135. Proteſting, that Plaintiff is not of ſo good Fame.

(45.) And the ſaid *B.* by *J. R.* his Attorney, comes and defends the Force and Injury, when, *&c.* and pleads, that the ſaid *A.* ought not to have or maintain her ſaid Action againſt him, becauſe Proteſting, that the ſaid *A.* is not of ſuch good Name, Fame, Condition, Converſation, Life and Behaviour, as ſhe by her ſaid Declaration above ſuppoſes, the ſaid *B.* by way of Defence pleads, that before the Speaking and Proclaiming the ſaid ſeveral ſcandalous Words in the ſaid Declaration above ſpecified, to wit, the 4th Day of *May* in the 8th Year of the Reign of his preſent Majeſty above mentioned, at *C.* aforeſaid, in the County aforeſaid, one *M. E.* was languiſhing under and ſick of a Fever, and the ſaid *M. E.* being ſo languiſhing under and ſick of

the ſaid Fever, the ſaid *A.* on the ſame Day and Year aforeſaid, took upon her to adminiſter Phyſick to the ſaid *M. E.* (the ſaid *A.* not being qualify'd or licenſed to practiſe Phyſick) and then and there unskilfully adminiſter'd purging Phyſick to the ſaid *M. E.* by Means whereof the ſaid *M. E.* ſoon after died, to wit, on the 6th Day of *May* aforeſaid, at *C.* in the County aforeſaid; for which reaſon the ſaid *B.* afterwards, to wit, on the ſame 6th Day of *May*, in the Year aforeſaid, at *C.* in the County aforeſaid, ſpoke of the ſaid *A.* the Words in the Declaration of the ſaid *A.* for that Purpoſe firſt above ſpecified, to wit, *She* [meaning the ſaid *A.*] *killed a Man with Phyſick*; and afterwards, to wit, on the ſame Day and Year aforeſaid at *C.* in the County aforeſaid, having Diſcourſe with ſeveral of his ſaid Majeſty's Subjects concerning the ſaid *A.* and the ſaid *M. E.* ſo killed, as aforeſaid, by the Cauſe aforeſaid, alſo ſpoke of the ſaid *A.* as he well might, the other Words in the Declaration of the ſaid *A* for that Purpoſe laſt mentioned, to wit, *She killed a Man*; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *A.* ought to have or maintain her ſaid Action againſt him, *&c.*

B. R.

(46.) And the ſaid *B.* by *M. J.* his Attorney, comes and defends the Force and Injury, when, *&c.* and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that true it is, that before the Time of Speaking and Publiſhing the Words in the ſaid Declaration for that Purpoſe above ſpecified, to wit, in *Trinity Term* laſt paſt in the Declaration above mentioned, an Action was depending in a Plea of Treſpaſs in the ſaid Court of our ſaid Sovereign Lord the King before the King himſelf, between the ſaid *R.* in the Declaration above mentioned, as Plaintiff in that Cauſe, and the ſaid *W.* in the ſame Declaration

A Juſtification of Words, for that the Plaintiff forſwore himſelf in an Iſſue. Mo. Intr. 134.

claration above mentioned as Defendant in the ſame Cauſe, in which ſaid Action ſuch Proceedings were had, that the Iſſue thereupon joined between the ſaid *R.* and *W.* came on to be tried by a Jury on the ſaid 6th Day of *June*, in the ſaid 8th Year of his ſaid Majeſty's Reign at *Weſtminſter* aforeſaid in the Great Hall of Pleas there, commonly called *Weſtminſter Hall*, before Sir *John Holt*, Knt. his ſaid Majeſty's Lord Chief Juſtice aſſigned to hold Pleas in the ſaid Court of our ſaid Sovereign Lord the King before the King himſelf, according to the Form of the Statute, *&c.*

Averment of the Point in Iſſue.

And the ſaid *B.* further ſaith, that the Iſſue aforeſaid being, whether the ſaid *R.* at the Time of the ſaid Treſpaſs happened to be out of his Limits (the ſaid *R.* being at that Time ſworn Conſtable of *C.* in the ſaid County of *Middleſex*) or not: Whereupon the ſaid *A.* the now Plaintiff afterwards, to wit, on the ſaid 6th Day of *June*, in the aboveſaid 8th Year of his ſaid Majeſty, before the ſaid Sir *John Holt*, Knt. the ſaid Chief Juſtice at *Weſtminſter* aforeſaid, in the ſaid Great Hall of Pleas there, in the ſaid County of *Middleſex*, was produced as a Witneſs to prove the Iſſue on the Part of the ſaid *W.* and was then and there ſworn in due Form of Law, before the ſaid Chief Juſtice to give in Evidence to the Jury, the Truth, the whole Truth, and nothing but the Truth of and concerning the Matter then in Iſſue, as aforeſaid; and thereupon was asked upon his ſaid Oath, whether the ſaid *R.* happened to be out of his Limits, or not, the ſaid *A.* upon his ſaid Oath before the ſaid Lord Chief Juſtice at *Weſtminſter* aforeſaid, in the ſaid Great Hall of Pleas there in the ſaid County of *Middleſex*, did affirm and give in Evidence to the Jurors of that Jury, that the ſaid *R.* happened to be out of his Limits (meaning the Limits of the ſaid *R.* as Conſtable of *C.* aforeſaid) for when the ſaid *R.* ſhould have turned to the Left Hand, he turned to the Right Hand: Whereas, in Truth, the ſaid *R.* did not happen to be out of his ſaid Limits, but within his Limits, by reaſon of which the

Evidence given.

Averment, that the Evidence was falſe.

the ſaid *B.* on the ſaid 6th Day of *June* in the aforeſaid 8th Year, of his ſaid Majeſty at *Weſtminſter* aforeſaid, in the ſaid County of *Middleſex*, having Diſcourſe with [*&c.*] concerning the ſaid Trial and of the ſaid *A.* and of the Evidence by him given at the Trial in the Cauſe aforeſaid, ſpoke of the ſaid *A.* the ſame Words, as are for that Purpoſe mentioned in the ſaid Declaration of the ſaid *A.* (to wit) *That Fellow* [meaning the ſaid *A.*] *hath forſworn himſelf* [meaning the ſaid *A.*] *in what he hath ſaid* [again meaning the ſaid *A.*] as he well might; which Words, that the ſaid *A.* gave in Evidence to the Jurors aforeſaid, at the Trial aforeſaid, were falſe, and intirely contrary to the Truth; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *A.* ought to have his ſaid Action thereof, *&c.*

Juſtification.

(47.) ——— When, *&c.* and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that before the Time of ſpeaking, proclaiming and publiſhing the ſaid Words above mentioned, and ſuppoſed to have been publiſhed by the ſaid *B.* of the ſaid *A.* that is to ſay, [*ſuch a Day and Year*] the Dwelling-houſe of him the ſaid *B.* at *B.* in the County aforeſaid, was feloniouſly and burglariouſly, againſt the Peace of our Sovereign Lord the King, his Crown, and Dignity, broken and enter'd by divers Felons and Malefactors; and that the ſaid *A.* is one of the ſaid Felons and Malefactors, who did feloniouſly and burglariouſly break and enter into the ſaid Dwelling-houſe of the ſaid *B.* by reaſon whereof the ſaid *B.* afterwards, to wit [*ſuch a Day and Year*] at *P.* aforeſaid, did ſpeak, relate, proclaim and pronounce the ſaid Words for that Purpoſe above mention'd in the ſaid Declaration, that is to ſay, *A. C. is a Felon, and was at the Breaking open of my Houſe* [meaning the Houſe of him the ſaid *B.* ſo feloniouſly and burglariouſly broken and entered as aforeſaid] as he the ſaid *B.* for the reaſon

A Juſtification of Words, the Plaintiff having committed the Burglary. Thompſon's Entries 72.

ſon aforeſaid, well might; and this he is ready to verify: And therefore prays Judgment, &c.

Pleas to Actions upon the Caſe for Wrongs and Diſturbances.

A Plea, that the Plaintiff's Mare died of ſeveral Diſeaſes, and traverſes the Working her exceſſively. Ro. Entr. 51.

(48.) ——— When, &c. and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that the ſaid Mare in the ſaid Declaration above mentioned died [*ſuch a Day and Year*] at *M.* in the ſaid County of *N.* of divers Diſeaſes; Without that, that the ſaid *B.* worked the ſaid Mare ſo exceſſively and immoderately for the ſaid two Days, that by reaſon thereof ſhe died; and this he is ready to verify, &c.

An Innkeeper pleads, that he put Plaintiff's Horſe to Graſs at his Requeſt, and that the Horſe was ſtoln. Inſtr. Cl. 382, 383.

Traverſe, that he was not taken out of the Inn for want of Care.

(49.) When, &c. and pleads, that the ſaid *A.* ought not to have his ſaid Action againſt him, becauſe he ſaith, that the ſaid *A.* at the Time in the ſaid Declaration above ſpecified, was entertained in his the ſaid *B.*'s Inn, and then and there requeſted him the ſaid *B.* to put the ſaid Gelding to Graſs in ſome Cloſe of Paſture of him the ſaid *B.* which Gelding was feeding in the ſaid Cloſe, and there depaſturing until certain Wrongdoers, on the Day and Year in the ſaid Declaration above mentioned, took and lead away the ſaid Gelding out of the ſaid Cloſe; Without that, that the ſaid Gelding, being in the ſaid Inn, was taken and carried away from the ſaid Inn, for Want of the Care of him the ſaid *B.* and his Servants, as the ſaid *A.* hath above complained againſt him; and this he is ready to verify, &c.

Replication, that the Horſe was taken out of the Inn for want of Care in Defendant and his Servants.

(50.) ——— That he ought not to be precluded from having his ſaid Action againſt the ſaid *B.* becauſe he ſaith, that upon the ſaid 10th of *May*, in the ſaid 6th Year of his ſaid Majeſty's Reign at *D.* aforeſaid, he delivered the ſaid Gelding to the ſaid *B.* in the Stable within the ſaid

ſaid Inn to be kept and fed; and that certain Wrong doers at the Time in the ſaid Declaration above ſpecified, took and led away the ſaid Gelding out of the Cuſtody of him the ſaid *B.* and his Servants; Without that, that he requeſted the ſaid *B.* to put his ſaid Gelding into ſome Cloſe of Paſture of him the ſaid *B.* to feed and depaſture there, as he the ſaid *B.* hath above in his ſaid Plea alledged; and this he is ready to verify: And therefore prays Judgment and his Damages occaſioned by the Premiſſes to be adjudged to him, *&c.*

(51.) And the ſaid *B.* as before, ſaith, that the ſaid *A.* did requeſt him to put his ſaid Gelding to Graſs in ſome Cloſe of Paſture of him the ſaid *B.* there to feed and depaſture, as he hath above in his Plea alledged; and of this he puts himſelf upon the Country; and the ſaid *A.* doth likewiſe the ſame: Therefore, *&c.* Rejoinder and Iſſue.

(52.) ——— Ought not to have his ſaid Action againſt him the ſaid *B.* becauſe he ſaith, that he now is, and upon the ſaid [*ſuch a Day and Year*] above mentioned, was a Common Carrier for carrying all Manner of Goods of all Perſons from *W.* aforeſaid, to the City of *L.* aforeſaid; and that the ſaid *A.* on the Day and Year aforeſaid, at *W.* aforeſaid, requeſted the ſaid *B.* to carry the ſaid Cloth to the ſaid City of *L.* by means of which Requeſt he the ſaid *B.* received the ſaid Cloth of the ſaid *A.* at *W.* aforeſaid, to be carried by him as a Common Carrier to the ſaid City of *L.* and within the ſaid Time to be delivered there, to the Uſe of the ſaid *A.* and did then and there put the ſaid Cloth into his Waggon with other Cloth and other Goods, to be carried to the ſaid City of *L.* by him the ſaid *B.* as a Common Carrier; and that one *C. D.* [*ſuch a Day and Year*] at *K.* in the County of *H.* broke and entered into the Houſe of one *J. G.* in which he the ſaid *B.* with his ſaid Waggon loaded as aforeſaid, in his Journey from *W.* The Defendant pleads, that he is a **Common Carrier**, and was **Robbed** of the Cloth at his Inn —— And **Traverſes** the Promiſe to carry the Cloth ſafely. 3 Inſtr. Cler. 388.

aforeſaid to the ſaid City of *London*, inned and lodged; and the ſaid Cloth ſo being loaded in the ſaid Waggon amongſt other Cloth, and in the ſame Houſe, againſt the Will of the ſaid *B.* feloniouſly took and carried away; **Without that**, that he promiſed and undertook to carry the ſaid Cloth ſafely and ſecurely from the ſaid Town of *W.* aforeſaid to the ſaid City of *London*, and there to deliver the ſaid Cloth to the ſaid *T.* to the Uſe of the ſaid *A.* within the Time aforeſaid, as he the ſaid *A.* by his ſaid Declaration above ſuppoſes; and this he is ready to verify, *&c.*

Plaintiff replied in Maintenance of his Writ; and thereupon Iſſue was joined.

A Plea by a Waterman, that the Goods were drowned in the River Thames by a violent Tempeſt, which was the ſole Act of God, and without any Default in the Defendant or his Servants.

(53.) ——— Becauſe he ſaith, that true indeed it is, That the ſaid *(Plaintiff)* delivered the ſaid Cheſt with the Monies, Goods and Chattels aforeſaid being therein, to the ſaid *(Defendant)* to be carried by the ſaid *(Defendant)* from *Waltham* upon *Thames* to *London*, and there to be delivered to the ſaid *(Plaintiff)* as the ſaid *(Plaintiff)* doth by his ſaid Declaration above ſuggeſt; but the ſaid *(Defendant)* ſaith further, that after the ſaid Cheſt with the Monies and Goods therein were ſo delivered by the ſaid *(Plaintiff)* to the ſaid *(Defendant)* to be carried as aforeſaid, he the ſaid *(Defendant)* did carry the ſaid Cheſt with the Monies and Goods aforeſaid being therein in his Boat, from *Waltham* upon *Thames* aforeſaid to *London* aforeſaid upon the ſaid River of *Thames*; and that afterwards, and before the ſaid *(Defendant)* could deliver the ſaid Cheſt with the Monies and Goods aforeſaid being therein *(that is to ſay)* on [*ſuch a Day and Year*] the Boat aforeſaid loaded with the ſaid Cheſt, and the Monies and Goods aforeſaid being therein, being on the ſaid River of *Thames*, to wit, at *London* aforeſaid, in the Pariſh of *St. Dunſtan in the Weſt*, in the Ward of *Farringdon Without*, by a great and violent Storm and Tem-

Tempeſt through the ſole Act of Providence, and without any Default, Negligence or Want of Care in the ſaid *(Defendant)* or his Servants, was drowned, and the ſaid Cheſt, with the Monies, Goods and Chattels aforeſaid being therein, was by the Occaſion aforeſaid ſunk, drown'd and loſt, ſo that the ſaid *(Defendant)* was not able to deliver to the ſaid *(Plaintiff)* the ſaid Cheſt with the Monies, Goods and Chattels aforeſaid being therein; **Without that**, that the ſaid Cheſt, with the Monies, Goods and Chattels aforeſaid being therein, were loſt and deſtroy'd through the Want of due Care thereof in the ſaid *(Defendant)* or his Servants, in ſuch Manner and Form as the ſaid *(Plaintiff)* doth above ſuggeſt in his Complaint againſt them; and this he is ready to verify, *&c.*

A Plea to a Declaration for a Diſturbance in a Seat in the Church, that Defendant hath a Seat in the Iſle in Queſtion, with a **Traverſe**, that all the Places there belong to the Plaintiff. 3 Inſtr. Cl. 360.

(54.) ——— Ought not to have or maintain his ſaid Action againſt him the ſaid *J.* becauſe he ſaith, that he the ſaid *J.* now is, and for four Years laſt paſt, hath been ſeiz'd in his Demeſn as of Fee of one antient Meſſuage called *D.* with the Appurtenances, in the Pariſh of *B.* in the County of and that he the ſaid *J.* and all his Predeceſſors, and all thoſe whoſe Eſtate the ſaid *J.* hath in the ſaid Meſſuage, with the Appurtenances, Time out of Mind, have had, and have been accuſtomed to have Liberty of Sitting, Kneeling and Standing in one Place, in a certain Pew antiently erected and ſituate in the ſaid Iſle, in the ſaid Weſt Part of the ſaid Church, on the ſaid Sundays and Feſtivals, and all other Days in which divine Service, or the Word of God have been read, preached, or the Sacrament adminiſtered in the ſaid Church, to attend in the ſame Seat and hear the ſame divine Service, and the Word of God read, preached, and the Sacrament adminiſter'd in the ſaid Church, as belonging to the ſaid Meſſuage, by reaſon whereof the ſaid *J.* on the aforeſaid Day of and on the ſeveral Days and Times above ſpecified did ſit in the ſaid Seat, as he lawfully might;

Without that, that the ſaid *C.* hath and hath been accuſtomed to have all the Places and Seats in the ſaid Iſle for himſelf and Family on Sundays and Feſtivals, and all other Days on which divine Service, or the Word of God have been read, preached, or the Sacrament adminiſter'd in the ſaid Church, of ſitting, kneeling and ſtanding, attending in the ſame, and hearing the ſame divine Service, and the Word of God read, preached, and the Sacrament adminiſter'd in the ſaid Church, as the ſaid *C.* hath above declared againſt him; and this he is ready to verify, &c.

A Plea to an Action on the Caſe, for Diſturbing of a Way, Defendant pleads that he is ſeiſed in Fee of the Locus in quo, and Traverſes the Plaintiff's Right to the Way.

(55.)——— Ought not to have or maintain his ſaid Action againſt him the ſaid *C.* becauſe he ſaith, that he at the Time when, &c. was ſeiſed of the ſaid two Parcels of Land with the Appurtenances (called *Southmore* and *Northmore)* in his Demeſn, as of Fee; and being ſo ſeiſed, he the ſaid *C.* at the Time when, &c. had encloſed the ſame Parcels of Land, with the Appurtenances, as he lawfully might; Without that, that the ſaid late Duke and all his Predeceſſors, and all thoſe whoſe Eſtate the ſaid late Duke had of and in the ſaid Meſſuage, and two hundred Acres of Land, Time out of Mind, have had and been accuſtomed to have for themſelves, Farmers and Tenants of the ſame Meſſuage and two hundred Acres of Land, as well a Foot-way, as a Horſe-way, at all Times of the Year, with all and all Manner of Carriages into, upon and over the ſaid two Parcels of Land of him the ſaid *C.* (called *Southmore* and *Northmore)* in *G.* aforeſaid, from the ſaid Meſſuage and two hundred Acres of Land aforeſaid, by going and carrying with their Carriages unto the ſaid Park of him the ſaid late Duke (called *Greatham Park)* in the County aforeſaid, and from the ſame Park, unto the ſaid Meſſuage and two hundred Acres of Land, from the Time aforeſaid, by returning and recarrying with their Carriages, as belonging to the ſaid Meſſuage and two hundred Acres of Land, as the ſaid *Y.* by his ſaid Writ and Declaration hath a-

bove

bove ſuppoſed; and this he is ready to verify, &c.

(56.) And the ſaid *T.* ſaith, that he, by any Thing before alledged by the ſaid *C.* ought not to be precluded from having his ſaid Action, becauſe he ſaith, that the ſaid late Duke and all his Predeceſſors, and all others, whoſe Eſtate the ſaid late Duke had of and in the ſaid Meſſuage and two hundred Acres of Land, Time out of Mind have had and been accuſtomed to have for themſelves, Farmers and Tenants of the ſame Meſſuage and two hundred Acres of Land, a certain Foot-way, as well as a Horſe-way, at all Times of the Year, into, upon and over the aforeſaid two Parcels of Land of the ſaid *C.* called *S.* and *N.* in *G.* aforeſaid, from the ſaid Meſſuage and two hundred Acres of Land aforeſaid, by going and carrying with their Carriages unto the Park of the ſaid late Duke (called *Greatham Park*) in the County aforeſaid, and from the ſaid Park unto the ſaid Meſſuage and two hundred Acres of Land, from the whole Time aboveſaid, by returning and recarrying with their Carriages, as belonging to the ſame Meſſuage and two hundred Acres of Land, with the Appurtenances, as he by his ſaid Writ and Declaration hath above ſuppoſed; and this he prays may be inquired of by the Country; and the ſaid *C.* doth likewiſe the ſame: Therefore, &c.

Replication, The Plaintiff takes Iſſue on the Traverſe, and Defendant joins Iſſue.

Iſſue.

(57.) ——— Ought not to have or maintain his Action againſt him the ſaid *C.* becauſe he ſaith, that true it is, that he the ſaid *C.* for the Term of five Years now laſt paſt, and more, hath been poſſeſſed and yet is poſſeſſed of the ſaid thirty Acres of Land, with the Appurtenances, lying and being in *N.* aforeſaid, as the ſaid *G.* by his Declaration above ſuppoſes; and proteſting, that he hath not cut, taken up and put together ſo much Corn from out of the ſaid thirty Acres of Land, as the ſaid *G.* hath above in his Declaration alledged, for Plea the ſaid *C.* ſaith,

A Plea, that the Prebendaries and Farmers have been uſed to carry the Tithes home at their own Expence, and **Traverſes** the Cuſtom alledged to the contrary.

Instr Cler. 364. Vid. Thomp. 75.

ſaith, that the Prebendaries of the ſaid Prebend, and their Farmers thereof, for the Time being, from the whole Time aboveſaid, have been uſed to collect and carry at their own Expence all Tithes of Corn belonging to the ſaid Prebend, of and from the Lands where the Corn grew, to what Place ſoever they ſhould pleaſe; Without that, that there now is, and Time out of Mind hath been an antient Cuſtom uſed and approved of within the Vill of *N.* aforeſaid, that all Poſſeſſors, Farmers or Occupiers of any Lands lying and being in *N.* aforeſaid, being Parcel of the Revenues of the Prebend of *B.* aforeſaid, have Time out of Mind been uſed and accuſtomed to carry every tenth Shock growing in every Year on any Lands in *N.* aforeſaid, being Parcel of the Revenues of the Prebend of *B.* aforeſaid, from the Place or Places where the Corn did grow, unto the ſaid Barn of the ſaid Prebend in *N.* aforeſaid, for the Uſe of the Prebendary of the ſaid Prebend, or his Deputy, or Farmer of the Tithes aforeſaid, for the Time being, in the Manner and Form as the ſaid *G.* hath above in his Declaration thereof alledged; and this he is ready to verify, *&c.*

Replication, and Iſſue upon the Traverſe.

(58.) And the ſaid *G.* ſaith, that, by any Thing by the ſaid *C.* above in Pleading alledged, he ought not to be precluded from having his Action thereof againſt the ſaid *C.* becauſe he as before ſaith, that there now is, and Time out of Mind hath been a certain antient Cuſtom uſed and approved of within the ſaid Vill of *N.* that all Poſſeſſors, Farmers or Occupiers of any Lands lying and being in *N.* aforeſaid, being Parcel of the Revenues of the Prebend aforeſaid, Time out of Mind have been uſed and accuſtomed to carry every Tenth Shock of Corn growing in every Year upon any Lands in *N.* aforeſaid, being Parcel of the Revenues of the Prebend of *B.* aforeſaid, from the Place or Places where the Corn grew, unto the Barn (called the *Tithe-Barn)* of the Prebend aforeſaid, for the Uſe of the Prebendaries of the

ſaid

ſaid Prebend, or of his Deputy or Farmer of the Tithes aforeſaid, for the Time being, in the Manner and Form as he the ſaid *G.* hath above in declaring alledged; and this he prays may be inquired of by the Country; and the ſaid *C.* doth likewiſe the ſame: Therefore, *&c.* Iſſue.

Certiorari.

(1.) GEORGE the Second, *&c.* To our Truſty and Well-beloved Sir *Robert Eyre*, Knt. Chief Juſtice of our Court of Common Pleas, Greeting: We willing, for certain Reaſons, to have it certified unto us, whether an Original Writ between *W. E.* and *D.* his Wife, and *W.* Biſhop of *London*, and *J. C.* Clerk of for this Cauſe, that they the ſaid Biſhop and *J. C.* do diſturb the aforeſaid *E.* and *D.* his Wife, in preſenting a fit Perſon to the Church of *T.* in the County of *S.* be had of Record under your Cuſtody, or not: We command you, that you ſearch the Original Writs and other Memoirs of the aforeſaid Court of Common Bench of *London* aforeſaid, of the Term of the *Holy Trinity*, in the 15th Year of our Reign, being filed under your Cuſtody, and whatſoever you ſhall find of the Writ aforeſaid, between the Parties aforeſaid, together with the whole Return of the ſame Writ, do you certify to us whereſoever, *&c.* without Delay: And have you there this Writ. Witneſs, &c. Certiorari to certify an Original.

(2.) George the Second, *&c.* To our Truſty and Well-beloved Sir *Robert Eyre*, Knt. our Chief Juſtice of our Court of Common Pleas, *Greeting*: We willing, for certain Reaſons, to be certified, whether *W. G.* hath made *A. B.* Gent. his Attorney, againſt *J. H.* late of, *&c.* in a Plea of Debt, we command you, that you ſearch amongſt the Warrants A Certiorari to certify a Warrant of Attorney out of the Court of C. B.

Warrants of Attorney of our Court of Common Pleas of *Trinity* and *Michaelmas Terms*, in the 10th Year of our Reign, being in your Cuſtody of Record, and forthwith certify to us, whereſoever, &c. what you ſhall thereupon find amongſt the ſaid Warrants of Attorney between the ſaid Parties in the ſaid Action, as fully and clearly as the ſame are now remaining before you, together with this Writ. Witneſs, &c.

Certiorari to the Chief Juſtice of the K. B. to certify the Bill and Imparlance in Court into the Ex. Chamb.

(3.) George the Second, &c. To our Faithful and Well-beloved Sir *John Holt*, Knt. our Chief Juſtice aſſigned to hold Pleas before us, *Greeting*: Whereas we lately for certain Cauſes, willing to be certified of a certain Record of a Declaration or Bill between *B. T.* and *T. K.* of the Pariſh of *St. Clements Danes*, of a Debt of 40 *l.* which the ſaid *B. T.* requires of the ſaid *T.* (as it is ſaid) and the Imparlance to the aforeſaid Declaration or Bill, being in your Cuſtody of Record, We command you, that you ſearch for the Declaration or Bill and Imparlance between the Parties aforeſaid in our Court before us of *Eaſter Term*, in the 2d Year of our Reign, being in your Cuſtody of Record, and what you ſhall therein find of the ſame, do you immediately certify to us in our Court of Exchequer Chamber at *Weſtminſter*, together with this Writ. Witneſs, &c.

A Certiorari to the Cuſtos Brev. in Ireland, to certify a Diſtringas Jur' & decem tales. Theſ. Brev. 75.

(4.) George, &c. To our Truſty and Well-beloved *H. A.* Eſq; Keeper of the Writs, Rolls, Indictments, Proceſs, Certificates, Memorandums and other our Records in our Court before us in *Ireland*, *Greeting*: We willing, for certain Cauſes, to be certified of our Writ of *Diſtringas Jurat' & decem tales*, directed to our Sheriff of our County of *Galloway*, between *C. B.* Plaintiff, and *O. A.* in an Action of *Treſpaſs and Ejectment*, and of the Indorſement and Return thereof, and of the Names of the Jury in a Panel to the ſaid Writ annexed, being in your Cuſtody of Record, We command you, that ſearching our Writs of *Diſtringas*

ſtringas Jur' & decem tal', and of the Indorſements and Returns thereof, and of the Panels of the Names of the Jurors to the ſaid Writs annexed of *Trinity*, *Michaelmas* and *Hillary Terms*, in the third Year of our Reign, of our County of *Galloway* in *Ireland*, being in your Cuſtody; and what you ſhall find of the ſaid Writ and of the Indorſement and Return thereof, and of the Panel of the Names of the Jury to the ſaid Writ annexed, between the ſaid Parties in the ſaid Action, amongſt the ſame or either of them, you ſhall forthwith certify to us, whereſoever, *&c.* as fully and intirely as the ſame remain before you, together with this Writ. Witneſs, &c.

Certiorari to the Ch. Juſt. of England to certify the Tenor of a Record and Judgment in the K. B. into Chancery.

(5.) George the Second, *&c.* To our Faithful and Well-beloved *Philip* Lord *Hardwick*, our Chief Juſtice aſſigned to hold Pleas before us, *Greeting*: We for certain Cauſes, willing to be certified concerning the Tenour of a Record, and the Proceſs of a certain Plaint, which was levied in our Court before us by a Bill between *D. T.* and *F. T.* Eſq; late Sheriff of the Country of *Suffolk* in an Action of Treſpaſs upon the Caſe, to the Damage of the ſaid *D.* 50 *l.* (as it is ſaid) and alſo of the giving Judgment in the ſame Court of *Eaſter Term* laſt, againſt the ſaid *F.* in the Plaint aforeſaid of the Plea of Treſpaſs upon the Caſe aforeſaid, We Command you, that without Delay you ſend to us in our Chancery, plainly and diſtinctly, the Tenour of the Record and Proceedings of the aforeſaid Plaint, and of the Judgment, together with all Things touching the ſame, by whatſoever Names the aforeſaid Parties are reputed in the aforeſaid Plaint, and this Writ. Witneſs, &c.

Certiorari to certify a Venire, and Hab. Corp. Juratorum.

(6.) George, by the Grace of God, *&c.* To our Beloved and Faithful *Henry* Earl of *Litchfield*, Keeper of our Writs of the Common Bench, *Greeting*: We willing, for certain Cauſes, to be certified of a Writ of *Venire Facias*, and of another

ther Writ of *Habeas Corpora*, between *J. T.* Gent. Plaintiff, and *J. R.* late of, &c. Defendant, directed to *A. D.* the late Sheriff of the ſaid County of *S.* together with the Panel and their reſpective Returns, **Do command you**, that you ſearch amongſt our Writs of the County aforeſaid, of the Terms of *Eaſter*, *Trinity* and *Michaelmas* [*in ſuch a Year*] which are in your Cuſtody of Record; and whatſoever ye ſhall find of the aforeſaid Writs, the Returns and the Panel thereupon, or any of them, do you without Delay certify to us whereſoever we ſhall be in *England*, as clearly and fully as they now remain before you, together with this Writ. **Witneſs**, &c.

Certiorari to remove a Cauſe into the King's Bench.

(7.) **George**, &c. To the Steward and Bailiffs of *Henry* Earl of *Lemſter*, Lord of the Manor of *Corbun* in the County of *Northampton*, *Greeting*: **We willing**, for certain Reaſons, to have a certain Plaint in our Court before you, againſt *Samuel Rawnet*, Gent. at the Suit of *George Shipley*, of a Plea of Treſpaſs upon the Caſe, certified to us, **Do command you**, that ye certify and return to us, whereſoever we ſhall then be in *England*, the ſaid Plaint, as fully and clearly, together with all Things touching the ſame, as they now remain before you, by whatſoever Names the ſaid *S. R.* and *G. S.* may be reputed therein, together with this Writ, that we may ſee what further of Right ought to be done therein. **Witneſs**, &c.

Certiorari to move an Exigent, Capias, &c.

(8.) **George** the Second, &c. To our Beloved and Faithful *J. B.* Knt. Chief Juſtice of our Common Bench [or *of our Court of Common Pleas*] *Greeting*: Whereas *W. C.* late of *R.* in the County of *S.* otherwiſe called, &c. together with *C. D.* &c. by our Writ iſſuing out of our Court before you and your Brethren, at the Suit of *R. W.* of *B.* &c. in an Action of Debt, directed to the Sheriff of the County of *S.* was put in Exigent to be outlaw'd, and by means thereof afterwards (to wit) at the County Court of *S.* held at *S.* was outlaw'd,

as by the Certificate of *J. W.* and *J. T.* two of our Coroners in the ſame County of *S.* by Virtue of our Writ to them directed for that Purpoſe, and returned to us in our Court before us, it manifeſtly appears, and there remains of Record; and now in our Court before us, we are informed, that the Record of Adjudication of our ſaid Writ of Exigent, and alſo of the Original Writ of *Capias* thereupon, do remain of Record in our Court before you and your Brethren, in your Cuſtody: And We, Willing to be certify'd thereof, Do command you, that you ſearch among the Rolls and other Memorandums [or *Remembrances*] of the Writs aforeſaid of the ſaid County of *S.* of *Eaſter*, *Trinity* and *Michaelmas Terms*, in the ſecond Year of our Reign, which are in your Cuſtody of Record; and whatſoever concerning the Premiſſes you ſhall find therein, do you fully and without Delay certify to us, whereſoever we ſhall then be in *England*, together with this Writ. Witneſs, &c.

A Certiorari to certify a Plaint in Replevin. Theſ. Brev. 77.

(9.) George, &c. To the Mayor, Bailiffs, Burgeſſes and Community of our Town of *Weymouth*, and *Melcomb Regis* in the County of *Dorſet*, and each of them, *Greeting*: We Willing, for certain Reaſons, to be certified, as well of a Plaint levied in our Court of the ſaid Town before you or one of you, without our Writ, between *M. B.* Plaintiff, and *B. A. Junior*, of a Plea [or *in an Action*] for unjuſtly taking and detaining the Goods and Chattels of the ſaid *M.* as is ſaid, as alſo of the whole Record and Proceedings of the ſaid Plaint thereupon depending, We command you, that ye diſtinctly and openly ſend to us under your Seal, *in fifteen Days from the Feaſt of St.* Martin, whereſoever, *&c.* the ſaid Plaint, and alſo the ſaid Record and Proceedings, together with all Things touching the ſame, as fully and clearly as the ſame are now remaining before you or either of you, by whatſoever Names the ſaid Parties are called in the ſame, together with this Writ; and that you prefix the ſame Day to the ſaid

ſaid Parties, &c. that we may further Cauſe to be done therein, as to us ſhall ſeem right to be done. Witneſs, &c.

Certiorari to the Clerk of the Peace to certify an Indictment. Theſ. Brev. 76.

(10.) George the Second, &c. To our Clerk of the Peace, and our Juſtices appointed to hear and determine divers Felonies, Treſpaſſes and other Miſdeeds in the County of *B.* and to every of them, *Greeting*: We, Willing to be certified of all and ſingular the Indictments of whatſoever Treſpaſſes contrary to the Form of the Statute of Riots, Routs and Unlawful Aſſemblies, and of Forcible Entries committed, and other Articles and Offences, whereof *W. H. A. W.* &c. named in the ſame Indictments, were indicted before you and each of you, Do command you, that you ſend before us at *Weſtminſter*, &c. under your Seals or the Seals of one of you, all the ſaid Indictments, together with all Things touching the ſame, by whatſoever Names the ſaid *W. H.* and *A. W.* are called in the ſame, together with this Writ, that we may farther cauſe to be done thereon, what ſhall ſeem to us right to be done, according to the Laws and Cuſtoms of this Kingdom of *England*. Witneſs, &c.

A Certiorari to certify the Conviction, where the Defendant was convicted upon an Indictment pending an Appeal. Theſ. Brev. 74.

(11.) George the Second, &c. To *T. R.* Mayor of the City of *London* and his Brethren, our Juſtices appointed to deliver our Gaol of *Newgate* of the Priſoners in the ſame Gaol, *Greeting*: Whereas *J. D.* by our Writ in our Court before us hath appealed *H. W.* and *T. T.* of a Robbery and a Breach of our Peace, and we are now informed, that the ſaid *H.* and *T.* have been lately indicted of the ſaid Robbery in our Court before us, and that the ſaid *H.* was thereupon convicted; and we Willing, before we proceed any further in the ſaid Appeal, for certain Cauſes, to be certified of the Record of that Conviction, and of the ſaid Indictment, Do command you, that returning to us this our Writ, you ſend to us under your Seals the Record of that Conviction and of the ſaid Indictment, *in the Octaves of St.* Hillary, as

fully and clearly as the ſame are now remaining before you, by whatſoever Names the ſaid *H.* and *T.* are charged in the ſame, that we may proceed further in the ſaid Appeal, as to us ſhall ſeem right: And have you, &c.

A Certiorari to the Chief Juſtice of B. R. in Ireland, to certify a Ve' Fa' and Diſtringas Jur'. Theſ. Brev. 75.

(12.) George, &c. To our Truſty and Well-beloved Sir *G. S.* Knt. our Chief Juſtice appointed to hold Pleas in our Court before us in *Ireland*, *Greeting*: We Willing, for certain Reaſons, to be certify'd, as well of our Writ of *Venire Facias* iſſued out of our ſaid Court between *T. C.* Plaintiff, and *M. G.* of a Plea [or *in an Action*] of *Treſpaſs and Ejectment*, directed to our Sheriff of our County of *Cork*, and returnable and returned before us in *Ireland*, on *Wedneſday next after three Weeks from the Day of the* Holy Trinity in the 4th Year of our Reign, and of the Panel of the Names of the Jury to the ſame Writ of *Ve' Fa'* annexed with the Return thereof being in your Cuſtody of Record; and of our Writ of *Diſtringas Jur'* aforeſaid, between the ſaid Parties in the ſaid Action likewiſe directed to our Sheriff of our ſaid County of *Cork*, and returnable and returned in our ſaid Court before us in *Ireland*, on *Friday next after*, &c. in the ſaid 4th Year of our Reign, and of the Panel of the Names of the Jury, to the ſaid Writ of *Diſtringas Jur'* annexed and returnable therewith, being likewiſe in your Cuſtody of Record; which ſeveral Writs and Panels are omitted out of the Record between the ſaid Parties in the ſaid Action, by you lately returned to us into *England*, by Virtue of our Writ of Error, and are yet remaining in your Cuſtody of Record (as it is ſaid) not as yet returned to us, Do command you, that you ſearching our Writs of *Ve' Fa'* of our County of *Cork*, of *Trinity Term* in the ſaid 4th Year of our Reign, and the Panels thereto annexed being in your Cuſtody of Record; and alſo our Writs of *Diſtringas Jur'* of our ſaid County of *Cork*, of *Michaelmas Term* in the ſaid 4th Year of our Reign, and the Panels of the Names of the Jury

to the ſame annexed, being likewiſe in your Cuſtody of Record; and whatſoever of the ſeveral Writs and Panels you ſhall find amongſt the ſame, do you certify and return to us forthwith, wherefoever, *&c.* together with the whole Returns of them, and the ſeveral Panels of the Names of the Jury to the ſame reſpectively annexed, as fully and clearly as they remain in your Cuſtody, together with this Writ. Witneſs, &c.

A Certiorari to the Biſhop to certify, whether a Woman was married, or not. Theſ. Brev. 76.

(13.) George, &c. To the Reverend Father in God *G.* Lord Biſhop of *Sarum*, *Greeting*: Whereas *J.* who was the Wife of *T. S.* hath demanded in our Court before our Juſtices at *Weſtminſter*, againſt Sir *R. P.* Knt. the third Part of the Manor of *S.* with the Appurtenances, as her Dower, by the Endowment of *T.* formerly her Husband, the ſaid *R.* came into our ſame Court, and pleaded, that the ſaid *J.* ought not to have Dower thereof, foraſmuch as the ſaid *J.* was never joined to the ſaid *T.* in lawful Matrimony, to which the ſaid *J.* hath replied in our Court, that ſhe ought not to be precluded from having her Dower, becauſe ſhe ſaid, that ſhe was lawfully married to the ſaid *T.* at *H.* in the County of *W.* in the Pariſh Church of *H.* and becauſe the Cognizance of ſuch Cauſe belongs to the Eccleſiaſtical Court, We command you, that you calling before you thoſe Perſons, which are neceſſary to be called in this Caſe, Do diligently inquire of the Premiſſes, and what you ſhall find thereof, do you certify by your Letters Patent to our Juſtices at *Weſtminſter*, in *one Month from the Feaſt of* Eaſter, together with this Writ, that we may proceed further in that Reſpect, as to us ſhall ſeem right and according to the Law and Cuſtom of our Kingdom of *England* to be done. Witneſs, &c.

Chal-

Challenge.

(1.) AND the ſaid Juſtices of Aſſize before whom, &c. have return'd their Record into this Court in theſe Words: Afterwards, the Day and Year within contain'd, came before Sir *T. J.* Knt. Chief Juſtice of his Majeſty's Court of Common Pleas, and Sir *J. Charlton*, Knt. one of the Juſtices of the ſame Court, his ſaid Majeſty's Juſtices appointed to hold the Aſſizes in the County of *Hertford*, according to the Form of the Statute, &c. came as well the within named *G. H.* Gent. as the within written *T. B.* by their Attornies within contained, and the Jurors of the Jury ſummon'd, of which Mention is within made, likewiſe came; and the ſaid *T. B.* challenged the Array of the Panel hereunto annex'd, becauſe he ſaith, that the Jury in the ſaid Panel named, at the Time of the Array of the ſaid Panel, were return'd of the Neighbourhood of *Watford*, alias *Waterford*, in the within written Record mention'd; and that the Town of *Waterford* aforeſaid is, and at the Time of the ſaid Array was within the Hundred of *Caſhoe* in the ſaid County; and that the ſaid Jury named in the ſaid Panel have nothing, nor had they, or either of them, at the Time of arraying the ſaid Panel, or at any Time ſince, in the Hundred of *Caſhoe*, nor were the Jury named in the ſaid Panel, or either of them, at the Time of Arraying the ſaid Panel, or at any Time afterwards, Inhabitants or Inhabitant within the Hundred of *Caſhoe* aforeſaid; and becauſe the ſaid *G. H.* cannot deny the ſaid Challenge made for the ſaid *T. B.* as aforeſaid, the ſaid *T. B.* prays that the ſaid Panel may be quaſhed: And becauſe this Court will conſider before they give Judgment of and upon the Premiſſes, a Day is given to the ſaid Parties to be here on the Morrow of the *Holy Trinity*, to hear their Judgment, becauſe this Court are not as yet ready,

A Challenge of the Array at the Aſſizes for Non-commorancy. Lilly 472.

Continuance.

ready, &c. At which Day came here as well the ſaid *J.* as the ſaid *T.* by their ſaid Attornies; and thereupon the Premiſſes being viewed, and fully underſtood by the Court, it is adjudged, that the ſaid Panel of the ſaid Jury be quaſhed, &c. and thereupon the ſaid *G.* prays his Majeſty's Writ to be directed to the ſaid Sheriff, to cauſe Twelve Men to come again, &c. and 'tis granted to him, &c. therefore the Sheriff is commanded to cauſe Twelve Men to come here again, from the Day of the *Holy Trinity*, in three Weeks, by which, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. At which Day the Jury between the Parties aforeſaid in the ſaid Action were reſpited between them until this Day, to wit, in three Weeks from the Day of St. *Michael*, unleſs his Majeſty's Juſtices appointed to hold the Aſſizes in the County aforeſaid, by Virtue of the Statute, &c. had come before, on *Thurſday* the 20th of *July* laſt paſt, at the Town of *Hertford*, in the County aforeſaid; and now here at this Day came the ſaid *G.* by his Attorney aforeſaid, and the ſaid Juſtices of Aſſize, before whom, &c. have ſent hither their Record in theſe Words: Afterwards at the Day and Place within contained, before, &c.

Venire awarded a-new.

Challenge of the Sheriff for the Cauſe of Conſanguinity, and a Writ to be directed to one of the Coroners, by reaſon of Tenure.

(2.) And the aforeſaid *W. R.* likewiſe came, and hereupon the aforeſaid *G.* ſaith, That *J. H.* Eſq; is now Sheriff of the County aforeſaid, which ſaid *J. H.* is Couſin to the ſaid *W.* (that is to ſay) the Son of *J. H.* Knight, Father of *A.* Mother of the ſaid *W.* and the ſaid *G.* further ſaith, That in the County aforeſaid there are two Coroners only, namely *C. S.* and *J. B.* and that the ſaid *C.* holds of the ſaid *W.* one Cloſe of Paſture, with the Appurtenances in *L.* in the County aforeſaid, by Fealty, and the Rent of Forty Shillings and eight Pence, every Year, at the Feaſts of the Annunciation of the Bleſſed Virgin *Mary* and St. *Michael* the Archangel, by equal Portions yearly to be paid; and for theſe Cauſes he prays his Majeſty's Writ of *Venire*

Venire Facias, to be directed to the aforeſaid *J. B.* the other Coroner of our ſaid Sovereign Lord the King of the County aforeſaid, ſo that the ſaid *C.* do in no wiſe intermeddle, &c. and becauſe the ſaid *W. R.* doth not deny the Premiſſes, but doth confeſs thoſe Averments to be true, it is granted to the ſaid *G.* &c. therefore the ſaid *J. B.* the other Coroner of the ſaid Lord the King of the County aforeſaid, is commanded, that he cauſe to come here *on the Morrow of the* Holy Trinity twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c.

A Challenge to the Sheriff for the Cauſe of Kindred. Coroners challenged for the Cauſe of Conſanguinity and Tenure. A Venire Facias to the Juſtices pray'd, that the Juſtices choſe Perſons to cauſe to come, &c. and by Conſent of Parties they were choſen.

(3.) And hereupon the ſaid *R. B.* ſaith, that *J. R.* Eſq; is now Sheriff of the County of *H.* which ſaid Sheriff is the Kinſman of the ſaid *R. B.* for that he married *S.* the Daughter of *P. S.* Eſq; deceaſed, the Father of *S.* Mother of *B.* now the Wife of the ſaid *R. B.* now the Plaintiff, which ſaid *S.* is ſtill alive (that is to ſay) at *P.* aforeſaid; and the ſaid *R. B.* further ſaith, that in the ſaid County of *H.* there are two Coroners only, namely, *F. P.* and *J. G.* Gent. and that the ſaid *F. P.* one of the ſaid Coroners is the Couſin of the ſaid *R. B.* (that is to ſay) the Son of a Daughter of *E.* Daughter of *M.* Daughter of *W. B.* Eſq; Father of *E.* Mother of *J.* Mother of the ſaid *R.* the now plaintiff, and alſo that the ſaid *J. G.* the other Coroner aforeſaid, holdeth of the ſaid *R. B.* as of his Manor of *C.* in the aforeſaid County of *H.* one Meſſuage, &c. with the Appurtenances, in *C.* aforeſaid, by Knight Services, and the ſaid *F.* and *J. G.* do not deny, but confeſs the Challenges aforeſaid; and hereupon as well the ſaid *J. B.* as the ſaid [*the other Party*] pray, that the Juſtices here do by their Diſcretion chooſe certain indifferent Perſons to cauſe to come here twelve, &c. to try the iſſue aforeſaid above joined: Whereupon the ſaid Juſtices here, as well with the Conſent of the aforeſaid *J. B.* as of the ſaid [*the other Party*] have choſen and named *T. M.* Gent. and *J. E.* Gent. to cauſe to come

here twelve, &c. to try the iſſue aforeſaid above joined; therefore the ſaid *T. M.* and *J. E.* are commanded, that they cauſe to come here *from the Day of the* Holy Trinity *in three Weeks*, twelve, &c.

Challenge, becauſe one of the Sheriffs is one of the Plaintiffs.

(4.) And hereupon the ſaid *(Defendant)* ſaith, that the ſaid *A. B.* and one *C. D.* are now Sheriffs of the ſaid City of *Briſtol*, and for that Cauſe prays a Writ of our Sovereign Lord the King to cauſe to come here twelve, &c. to try the Iſſue aforeſaid, to be directed to the ſaid *C. D.* the other Sheriff of the ſame City of *B.* and becauſe the ſaid *A. B.* does not deny the ſame, it is granted to him, &c. Therefore the ſaid *C. D.* the other Sheriff of the City aforeſaid, is commanded, that he cauſe to come here *from the Day of the* Holy Trinity *in three Weeks* twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. becauſe as well, &c. ſo that the aforeſaid *A. B.* the other Sheriff of the City aforeſaid ſhall not intermeddle therein, &c.

A Challenge for that the Sheriff is Father to the Wife of the Plaintiff.

(5.) At which Day came here the Parties aforeſaid, and the Sheriff did not return the Writ; and thereupon the ſaid *E. B.* ſaith, that after the laſt Continuance of the Plea aforeſaid (that is to ſay) after the Month of St. *Michael* laſt paſt from which Day the Plaint aforeſaid was laſt continued here until this Day (that is to ſay) to the 15th Day of *November* laſt paſt, our Sovereign Lord the King that now is by his Letters Patent hath committed to one *J. C.* Eſq; the Cuſtody of the County aforeſaid, by Virtue of which ſaid Letters Patent the ſaid *J.* is now Sheriff of the ſaid County; and that the ſaid *E.* did marry *C.* the Daughter of the ſaid *J. C.* being now alive; and for that reaſon the ſaid *E.* prays a writ of our ſaid Sovereign Lord the King, to be directed to his ſaid Majeſty's Coroners of the County aforeſaid, commanding them to cauſe twelve, &c. to come here, &c. and becauſe the ſaid *R. D.* doth deny the ſame, it is granted to him, &c. Therefore his ſaid Majeſty's Coro-

Coroners of the County aforeſaid are commanded, that they cauſe to come here *in eight Days of St.* Hillary twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize in the manner aforeſaid, *&c.*

(6.) And becauſe the ſaid *H. named* in the Challenge aforeſaid, doth not acknowledge, but altogether denies it to be true; therefore (notwithſtanding the Challenge aforeſaid) the Sheriff of the County aforeſaid is commanded, that he cauſe to come, or rather [*appear*] before our Sovereign Lord the King, *&c.*

Where the Matter of the Challenge is denied.

(7.) And hereupon the ſaid *H.* doth alledge, that Sir *N. F.* Knight, now Sheriff of the County of *York*, is a Couſin of the ſaid *H.* (that is to ſay) Son of *Elizabeth*, Daughter of *William* the Son of *William*, the Father of *Johanna*, the Mother of *John*, the Father of the ſaid *H.* the now Plaintiff; and this he is ready to verify: Whereupon the ſaid *H.* prays a Writ of *Venire Facias* of our Sovereign Lord the King [or *his Majeſty's Writ of* Venire Facias] to be directed to the Coroners of our Sovereign Lord the King in the County aforeſaid [or *rather to his Majeſty's Coroners of the County aforeſaid*] for trying the Iſſue aforeſaid, joined between him and the ſaid *T. D.* in the Manner aforeſaid; and becauſe the ſaid *T. D.* doth not deny this Matter, but acknowledges it to be true; therefore, *&c.*

Another Form of the Entry of a Challenge of the Sheriff, and a Writ of Venire Facias pray'd, to be directed to the Coroners, &c.

(8.) And thereupon the ſaid *A. B.* doth alledge, that *R. W.* who at preſent is one of the Sheriffs of the ſaid City of *Norwich* hath married *Anne* Couſin to the ſaid *C. D.* (now alive,) Daughter to *A. S* Son to *G. S.* Father of the ſaid *A.* Mother of the ſaid *C. D.* and this he is ready to verify, *&c.* And the ſaid *A.* prays, that his Majeſty's Writ of *Venire Facias* to try the Iſſue aforeſaid between the ſaid *A. B.* and *C. D.* joined in the Manner aforeſaid, be directed to *T. P.* the other preſent Sheriff of the City aforeſaid; ſo that the ſaid *R.* do in no wiſe intermeddle therein: And

Another Form of an Entry, where the Plaintiff doth challenge one of the Sheriffs for Affinity, and prays, that the Writ of Venire may be awarded to the other.

becauſe the ſaid *R.* doth not deny, but confeſs it to be true; therefore the ſaid *T. P.* the other Sheriff of the City aforeſaid is commanded, that he cauſe to come before our Sovereign Lord the King at *Weſtminſter*, on *Monday* next after the Morrow of the Aſcenſion of our Lord, twelve, *&c.* ſo that the ſaid *R. W.* the other Sheriff of the ſaid City, do in no wiſe intermeddle therein, by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.*

Claim.

The Manner of pleading a **Claim** of **Dower** in Lands, pleaded by Way of Replication to a Plea, that the Defendant did not claim Dower in the Lands entailed.
Tho. Entr. 197, 198.

(1.) AND the ſaid *J. S.* replies, that he ought not to be precluded from having his Action aforeſaid, becauſe he ſaith, that the ſaid *G. H.* in his life-time, and during his Marriage with the ſaid *A.* his Wife, was ſeiſed [*of ſuch Lands, ſetting them out*] and before the making of the ſaid Obligation (to wit) [*ſuch a Day and Year*] enfeoffed one *J. S.* of the ſaid Tenements, with the Appurtenances, To have and to hold the ſaid Tenements, with the Appurtenances, to the ſaid *J.* his Heirs and Aſſigns for ever; by virtue of which Feoffment, he the ſaid *J.* was ſeiſed of the Tenements aforeſaid, with the Appurtenances, in his Demeſn as of Fee, and the ſaid *J.* being ſo ſeiſed thereof, he the ſaid *G.* afterwards, and before the Day of the Iſſuing forth of the Original Writ of the ſaid *J.* (to wit) on the 2d Day, *&c.* at *K.* aforeſaid died, and the ſaid *A.* ſurvived him, and afterwards, to wit, [*ſuch a Day and Year*] he the ſaid *A.* married one *J. J.* by Means whereof the ſaid *J. J.* and *A.* in Right of the ſaid *A.* his Wife had a legal Right and Title to claim and have the third Part of the Tenements aforeſaid, with the Appurtenances, (whereof the ſaid *G.* had enfeoffed the ſaid *J. S.* as aforeſaid,) as the Dower of

of the ſaid *A.* of the Endowment of the ſaid *G.* her late Husband, againſt the ſaid *J. S.* then being ſeiſed of the Tenements aforeſaid, with the Appurtenances in his Demeſn as of Fee, in the Manner aforeſaid; and the ſaid *J. S.* further ſaith, that the ſaid *J. J.* afterwards, to wit, [*ſuch a Day and Year*] at *K.* aforeſaid, having, as aforeſaid, a legal Right and Title to claim and have the third Part of the Tenements aforeſaid,] with the Appurtenances, for the ſaid *A.* his Wife, as the Dower of the ſaid *A.* of the Endowment of the ſaid *G.* her late Husband, he the ſaid *J. S.* then being ſeiſed of the ſaid Tenements in the Manner aforeſaid, did legally claim the third Part of the Tenements aforeſaid for the Dower of the ſaid *A.* and then and there requeſted the ſaid *J. S.* to aſſign the ſame to the ſaid *A.* then the Wife of the ſaid *J. J.* contrary to the Form and Effect of the ſaid Condition; and this he is ready to verify: Whereupon he prays Judgment and his Debt aforeſaid, together with his Damages occaſioned by detaining the ſame, to be adjudged to him, *&c.*

A Rejoinder denying ſuch Claim of Dower.

(2.) And the ſaid (*Defendant*) proteſting, that the ſaid *J. J.* did not requeſt the ſaid *J. S.* to aſſign to the ſaid *A.* then Wife of the ſaid *J. J.* a third Part of the Tenements aforeſaid, with the Appurtenances, for the Dower of the ſaid *A.* of and in the Tenements aforeſaid, with the Appurtenances, as the ſaid *J. S.* hath above alledged, for Plea ſaith, that the ſaid *J. J.* did not legally claim for the ſaid *A.* his Wife, a third Part of the Tenements aforeſaid, with the Appurtenances, for the Dower of the ſaid *A.* contrary to the Form of the Condition aforeſaid, as the ſaid *J. S.* hath above alledged; and this he is ready to verify: Wherefore he prays Judgment, and that the ſaid *J. S.* may be precluded from having his Action aforeſaid againſt him, *&c.*

An Iſſue thereon.

(3.) And the ſaid *J. S.* as before ſaith, that the ſaid *J.* did legally claim for the ſaid *A.* his Wife, a third

a third Part of the Tenements aforeſaid for the Dower of the ſaid *A.* contrary to the Form of the Condition aforeſaid, as the ſaid *J. S.* hath above alledged; and this he prays may be inquired of by the Country, and the ſaid *J.* prays likewiſe the ſame, *&c.*

The Manner of ſetting forth a Claim to an Eſtate-Tail, as Iſſue in Tail. 1 Saund. 257.

(4.) *After ſhewing a Deſcent to the Iſſue in Tail, then thus:* That *C. G.* afterwards and before [*ſuch a Feaſt*, i. e. *that the Rent became due on*] to wit, [*ſuch a Day and Year*] at *S.* aforeſaid died, after whoſe Deceaſe the Tenements aforeſaid, with the Appurtenances, deſcended to one *S. G.* as the only Daughter and Heir to the ſaid *C. G.* of his Body lawfully begotten, whereby the ſaid *S. G.* afterwards, and before the ſaid Feaſt of St. *Michael* the Archangel now laſt paſt (to wit) [*ſuch a Day and Year*] entered into the Tenements aforeſaid, with the Appurtenances, upon the Poſſeſſion of the ſaid *J. G.* claiming her Right and Eſtate-Tail aforeſaid, of and in the Tenements aforeſaid, with the Appurtenances, and removed and expelled the ſaid *J. G.* from his ſaid Poſſeſſion therein, and was thereof ſeiſed in her Demeſne as of a Fee-Tail, to wit, to her and the Heirs of the Body of the ſaid *G. C.* and *J.* his Wife lawfully iſſuing, *&c.*

The Manner of ſetting forth a Claim in Pleadings under a Surrender of Copyhold Lands for Life. 1 Saund. 148.

(5.) And the ſaid *J. W.* further ſaith, that after the making of the ſaid Obligation, and alſo after the Surrender of the Meſſuage aforeſaid, by the ſaid *S. B.* to the ſaid *J. W.* in the Manner aforeſaid, to wit, [*ſuch a Day and Year*] ſhe the ſaid *J. S.* claiming a Right and Title to the Meſſuage aforeſaid, with the Appurtenances, for the Term of her Life, under the ſaid *L. S.* by Virtue of the Surrender aforeſaid, made by the ſaid *L. S.* in the Manner aforeſaid) entered into the Meſſuage aforeſaid, with the Appurtenances, upon the Poſſeſſion therein of the ſaid *J. W.* and expelled and drove out the ſaid *J. W.* from his Poſſeſſion therein, and was and now is ſeiſed thereof, as of a Freehold

Freehold for the Term of her Life at the Will of the Lord, according to the Cuſtom of the Manor aforeſaid, &c.

Colour.

(1.) BECAUSE he ſaith, that one *C. S.* was ſeiſed of the ſaid ten Acres of Land, with the Appurtenances, in his Demeſn as of a Fee, and being ſo ſeiſed thereof, he the ſaid *C.* enfeoffed *R. N.* and *E.* his Wife, *P. M.* and *J. G.* to hold to them and their Heirs for ever, by Virtue of which Feoffment, the ſaid *R. E. P.* and *J.* were ſeiſed thereof in their Demeſn as of Fee, which Eſtate of the ſaid *R. E. P.* and *J.* in the ſaid ſix Acres, with the Appurtenances, he the ſaid *R. C.* now hath, and at the Day of ſuing out the Original Writ of the ſaid *A. B.* and ever ſince had therein, and the ſaid *J. S.* (claiming the ſaid ſix Acres of Land, with the Appurtenances, by Colour of a certain Charter of Demiſe made to him thereof for the Term of his Life, by the ſaid *C.* long before the ſaid Feoffment made by the ſaid *C.* to the ſaid *R. E. P.* and *J.* in the Manner aforeſaid, whereas nothing ever paſſed of the ſaid Acres of Land in the Poſſeſſion of the ſaid *J.* by that Charter of Demiſe,) enter'd into the ſaid Acres of Land with the Appurtenances, &c.

The Form of giving Colour in Pleading.

Commit-

Commitment.

A Commitment in Execution to the Marſhal of B. R. where the Plaintiff acknowledges the Receipt of Part of the Debt. Lilly's Entr. 488.

(1.) —— AFterwards, to wit, *on Wedneſday next after one Month from* St. *Michael* then next following, came the ſaid Governors perſonally before our ſaid Sovereign Lord the King at *Weſtminſter*, and acknowledged to have received of the ſaid *R.* 90 *l.* 14 *s.* 6 *d.* Part of the ſaid Debt and Damages; and the ſaid *R.* then preſent here in Court, was at the Inſtance of the ſaid Governors committed by this his ſaid Majeſty's Court to the Marſhal of the Marſhalſea of our ſaid Sovereign Lord the King before the King himſelf in Execution for the ſaid 111 *l.* 18 *s.* 6 *d.* being the Reſidue of the ſaid Debt and Damages at the Suit of the ſaid Governors there to remain until, &c.

A Commitment in Execution to the Marſhal of B. R. Lilly's Entr. 151.

(2.) —— And afterwards, to wit, on *Saturday* next after fifteen Days from the *Holy Trinity*, in the Term of the *Holy Trinity* in the ſaid 5th Year of the Reign of our ſaid late Sovereign Lord and Lady King *William* and Queen *Mary* now King and Queen of *England* before their ſaid Majeſties at *Weſtminſter*, came the ſaid Lady *Catharine*, Queen Dowager of *England* in her own Perſon; and the ſaid *F. H.* then preſent in the ſame Court, at the Inſtance of the ſaid Lady *Catharine*, Queen Dowager of *England*, was committed to the Cuſtody of *W. B.* being Marſhal of the Marſhalſea of our ſaid Sovereign Lord the King and Queen, before the ſaid King and Queen, in Execution for the ſaid Damages at the Suit of the ſaid *Catharine*, Queen Dowager of *England*, there to remain in Execution, until he hath fully ſatisfy'd the ſaid Damages to the ſaid *Catharine*, Queen Dowager of *England*, &c.

A Commitment to the Fleet after Judgment.

(3.) And be the ſaid Defendant amerced, &c. [or *in the Mercy*, &c.] afterwards, to wit, the

16th Day of *November*, in the first Year of the Reign of his present Majesty, came here into this Court the aforesaid (*Defendant*) in his proper Person, and upon this the said (*Defendant*) is committed to his Majesty's Prison of the Fleet by reason of the Premisses there to abide until, &c.

A Commitment to the Fleet in Discharge of Bail.

(4.) ——— Afterwards, to wit, [*such a Day*] then next following, came here into this Court the said *W.* in his proper Person, and as well for his own Indemnity, as for that of his Bail, prays, that he may by the Court here be committed to his Majesty's Prison of the Fleet, by reason of the Judgment aforesaid, there to abide until, &c. and that his said Bail may be discharged from their Recognizance: Whereupon the said *W.* present here in Court, at the Request of the said Plaintiff, is committed to the Prison aforesaid in Execution, for the Debt and Damages aforesaid, recover'd in the Manner aforesaid, there to abide until, &c. And the said Bail, to wit, *A. B.* and *C. D.* are here fully discharged by this Court from their Recognizance aforesaid.

Confirmation.

The Manner of Pleading a Confirmation by a Dean and Chapter of a Demise made by the Bishop.

(1.) AND as to the Residue of the said Trespass above supposed to have been committed, the said *D.* pleads, that the said *A.* ought not to have or maintain his said Action thereof against him, because he saith, that the said Close, and also the Places, in which the Trespass aforesaid is supposed to have been committed, are, and at the Time when the said Trespass is supposed to have been committed were, one Messuage, with the Appurtenances, in *N.* aforesaid, whereof before the said Time when, &c. one *J. N.* Clerk, a Prebendary of the Prebend of *N.* aforesaid in the Cathedral Church of *H.* was seised in his Demesn

meſn as of Fee, in Right of the ſaid Prebend; and being ſo ſeiled thereof before the ſaid Time when, &c. to wit, [*ſuch a Day and Year*] at *N.* aforeſaid, by a certain Indenture in Writing, which the ſaid *D.* brings here into Court ſealed with the Seal of the ſaid *J. N.* dated the ſame Day and Year, demiſed the Tenements aforeſaid, with the Appurtenances, (amongſt other Things) to the ſaid *D.* by the Name of all his Prebend of *N.* aforeſaid, with all Lands, Tenements and Hereditaments thereto belonging in *H.* aforeſaid, To have and to hold to the ſaid *D.* and his Aſſigns, from the Feaſt of the Anunciation of the Bleſſed Virgin *Mary* then next following, to the End and Term of twenty-one Years from thence next enſuing, and fully to be compleat and ended; yielding and paying therefore yearly, and every Year during the Term aforeſaid, to the ſaid Prebendary and his Succeſſors 10 *l.* at the Feaſts of St. *Michael* the Archangel, and the Anunciation of the Bleſſed Virgin *Mary*, by even and equal Portions; by Virtue of which Demiſe the ſaid *D.* was poſſeſſed, amongſt other Things, of the Tenements aforeſaid, with the Appurtenances, in which &c. and being ſo poſſeſſed, one *J H.* a Biſhop, then being the true and undoubted Patron and Ordinary of the ſaid Prebend of *N.* aforeſaid, afterwards, to wit, [*ſuch a Day and Year*] by his Writing ſealed with his Common Seal, and brought into this Court, dated the ſame Day and Year, ratified, approved of and confirm'd the Eſtate, Term and Intereſt of the ſaid *D.* of and in the ſaid Premiſſes, and afterwards *J. E.* Maſter of Arts, Dean of the ſaid Cathedral Church, and the Chapter of the ſame Church then being, to wit, [*ſuch a Day and Year*] by their Writing ſealed with their Seal, dated the ſame Day and Year, likewiſe ratified, approved of and confirmed the Eſtate, Term and Intereſt of the ſaid *D.* of and in the ſaid Premiſſes, &c.

Conſultation.

(1.) AFterwards (that is to ſay) on the 8th Day of *May*, in the 9th Year of the Reign of his preſent Majeſty, comes here into Court, the ſaid *G. H.* by *T. D.* his Attorney, and prays his Majeſty's Writ of Conſultation of and upon the Premiſſes, to be adjudged to him; inaſmuch as it will appear here to this Court by the aforeſaid Depoſitions of the ſaid *L. B.* and *M. H.* the Witneſſes aforeſaid brought here into Court to prove the Suggeſtion aforeſaid, between the Parties aforeſaid, that the aforeſaid Tithes of the Meſſuage and Lands aforeſaid in that Suggeſtion mention'd, were not paid to the Vicar of the Pariſh Church of *M.* aforeſaid, nor was any Compoſition made with the Vicar for the ſame during the Time mentioned in the ſaid Suggeſtion; and ſo the Cognizance of the Cauſe aforeſaid belongs to the Eccleſiaſtical Court, and ought not to be determined and diſcuſſed here in this Court: Whereupon the Premiſſes being inſpected and fully underſtood by this Court, it appears to the Juſtices here, that the Cognizance of this Cauſe contain'd in the aforeſaid Suggeſtion of the ſaid *R. D.* belongs to the Eccleſiaſtical Court, and ought not to be determined and diſcuſſed here in this Court; inaſmuch as it appears to this Court, by the ſaid Depoſitions of the ſaid *L. B.* and *M. H.* the Witneſſes aforeſaid brought here into Court to prove the Suggeſtion aforeſaid between the Parties aforeſaid, that the ſaid Tithes of the Meſſuage and Lands aforeſaid mention'd in that Suggeſtion were not paid to the ſaid Vicar of the Pariſh-Church of *M.* aforeſaid, nor was any Compoſition made with the ſaid Vicar for the ſame, during the Time mentio.'d in the Suggeſtion aforeſaid, as the ſaid *S.* hath above alledged; therefore the ſaid Spiritual Judge is commanded, that he do proceed with all poſſible Speed in the Cauſe aforeſaid,

A Writ of Conſultation awarded, for that the Plaintiff failed to prove his Suggeſtion.

ſaid, between the Parties aforeſaid, according to the Eccleſiaſtical Laws; the ſaid Writ of Prohibition of our ſaid Sovereign Lord the King, above directed to him in the Manner aforeſaid, to the contrary in any wiſe notwithſtanding, *&c.*

Judgment for the Defendant, and a Writ of **Conſultation** awarded after a **Demurrer** to the **Declaration.**

(2.) At which Day comes here as well the ſaid Plaintiff, who as well, *&c.* as the ſaid Defendants by their Attornies aforeſaid; and hereupon the Declaration being here read, heard and underſtood by the Juſtices, it manifeſtly appears to the ſame Juſtices here, that the Declaration aforeſaid, in the Manner and Form aforeſaid made and ſet forth, and the Matters therein contain'd are inſufficient in Law to maintain the Prohibition aforeſaid, granted in the Manner aforeſaid; **Therefore it is adjudged,** that the ſaid Defendant may depart hence without a Day, and it is alſo **adjudged,** that the ſaid Defendant may have his Majeſty's Writ of Conſultation [*as before*].

A Writ of **Conſultation** awarded, for that the Plaintiff did not prove his Suggeſtion within Six Months, and **double Coſts** for the Defendant.

(3.) Afterwards (that is to ſay) on the 28th Day of *November*, in the 9th Year of the Reign of his preſent Majeſty, comes here into Court the ſaid *M. T.* by *H. M.* her Attorney, and prays his Majeſty's Writ of Conſultation as to the ſaid Tithes of Honey and Wax ſpringing, renewing, encreaſing and happening of and out of the Bees of the aforeſaid *H. C.* kept in his Garden within the Pariſh aforeſaid, and the Bounds, Limits and tithable Places of that Pariſh, in the Years and Months aforeſaid, to be directed to the worſhipful, *&c.* [*the Judge of the Spiritual Court*] for that the ſaid *H.* within ſix Months next after the granting of the Prohibition aforeſaid, hath not proved his Suggeſtion aforeſaid, as to the Tithes aforeſaid of the Honey and Wax aforeſaid, by ſufficient Witneſſes, according to the Form of the Statute in that Caſe made and provided: Whereupon, inaſmuch as it manifeſtly appears here to this Court, that the ſaid *H.* within ſix Months after the ſaid 28th Day of *November*, in the 8th Year of the Reign of our ſaid Sovereign Lord the King,

King, hath not proved his Suggeſtion aforeſaid, as to the ſaid Tithes of Honey and Wax aforeſaid, by credible Witneſſes according to the Form of the Statute aforeſaid, by his ſaid Majeſty's Writ of Conſultation, the ſaid Spiritual Judge is commanded, that in the Cauſe aforeſaid between the ſaid Parties, as to the ſaid Tithes of the Honey and Wax aforeſaid, he do proceed with all poſſible Speed, according to the Eccleſiaſtical Laws, the ſaid Writ of Prohibition of our ſaid Sovereign Lord the King before directed to him in the Manner aforeſaid in any wiſe notwithſtanding: And moreover, according to the Form of the Statute aforeſaid, the ſaid Juſtices do here aſſeſs for the Coſts and Charges of her the ſaid *M. T.* which ſhe hath ſuſtained by reaſon of the Proſecution of his ſaid Majeſty's Writ of Prohibition, as to the ſaid Tithes of the Honey and Wax aforeſaid, beſides her Damages, to 40 *s.* and for thoſe Damages to 10 *s.* which ſaid Coſts, Charges and Damages being doubled, according to the Form of that Statute, in the whole do amount to 100 *s.* *&c.*

A Writ of Conſultation after a Prohibition having iſſued for adminiſtring the Oath Ex Officio.

(4.) **George** the Second, *&c.* To the Reverend Father in God *John*, by divine Providence Biſhop of *Norwich*, or any other Judge whatſoever competent in this Behalf, *Greeting*: Whereas we have lately been informed in our Court, before our Juſtices at *Weſtminſter*, on the Behalf of *John Gardiner*, that whereas by the Laws of this our Kingdom of *Great Britain*, no Perſon ought to be cited to appear in any Court Chriſtian before any Spiritual Judge, to take an Oath, unleſs only in Cauſes Matrimonial and Teſtamentary, *&c.* and by a certain Act of Parliament begun and held at *Weſtminſter*, on the 8th Day of *May* in the 13th Year of the Reign of our late Sovereign Lord King *Charles* the Second, late King of *England*, and there continued till *Tueſday* the 30th Day of *July* in the 13th Year aforeſaid, and from that Day adjourned to the 20th Day of *November* then next following, amongſt other Things it was enacted by the Authority of the

ſame Parliament, that it ſhould not be lawful for any Archbiſhop, Biſhop, Vicar General, Chancellor, Commiſſary, or any other Spiritual Eccleſiaſtical Judge, Official or Officer, or any other Perſon having or exerciſing Spiritual or Eccleſiaſtical Juriſdiction, to offer or adminiſter to any Perſon whatſoever the Oath uſually called the Oath *Ex Officio*, or any other Oath, by which ſuch Perſon to whom it ſhould be offer'd or adminiſter'd ſhould be charged or compelled to confeſs or accuſe, or purge him or herſelf of any criminal Matter or Thing by which he or ſhe ſhould be chargeable with any Cenſures or Puniſhment; the aforeſaid Act, or any Uſage or Law to the contrary in any wiſe notwithſtanding, as by the ſame Act, amongſt other Things, it more fully appears: Moreover the ſaid *John Gardiner* having been a Churchwarden of the Pariſh-Church of *Woodbridge*, and by the Law of this Kingdom of *England*, no Churchwarden of this Kingdom of *England* hath been bound to take any Corporal Oath of the Execution of his ſaid Office, unleſs to execute it to the beſt of his Knowledge, which ſame Oath the ſaid *John Gardiner* hath alſo been ready and even then was ready to take; nevertheleſs you not regarding the Laws and Statutes aforeſaid, on the 1ſt Day of *Auguſt* in the 7th Year of our Reign, at *Wickham* Market in the County of *Suffolk*, by the Miniſter in that Behalf competent, tender'd to the ſame *John Gardiner* then being a Churchwarden of the Pariſh Church of *Woodbridge* in the ſaid County of *Suffolk*, a certain illegal Oath of Office to be taken by the ſaid *John Gardiner*, in a Cauſe which was not Matrimonial or Teſtamentary, by which the ſaid *John* might have charged and accuſed himſelf of divers criminal Matters, by which he would have been liable to Eccleſiaſtical Puniſhment and Cenſures, in which ſaid Oath tender'd to the ſaid *John Gardiner*, as aforeſaid, it was order'd amongſt other Things, that the ſaid *John Gardiner* ſhould execute the Office of Churchwarden of the Pariſh Church of *Woodbridge* aforeſaid for one Year

Year then next following, in all Things according to the Form of the written Law, whereas in Truth the ſaid *John Gardiner* was a Layman, and altogether unskilled in the Canon or Civil Law; and whereas in Truth the ſaid *John Gardiner*, by Virtue of that Oath ſo tender'd, as aforeſaid, would have been bound by the Canon Law, amongſt other Things, to preſent every Perſon which then or late had been an Inhabitant in the Pariſh of *Woodbridge* aforeſaid, who had not done his Duty, or committed any Offence contrary to the Eccleſiaſtical Laws of this Kingdom; and alſo to preſent every Perſon commorant within the ſaid Pariſh of *Woodbridge*, which ſhould not have duly reſorted to Church every Lord's Day and Feſtival appointed to hear divine Service, and then and there ſhould not have remain'd quietly with Reverence, Order and Decency during the whole Time of Common Prayer or other Service of God there uſed; and alſo to have preſented every Perſon that ſhould have come late to the Church, after the Beginning of divine Service, or depart before the End thereof; and that the ſaid *John* ſhould likewiſe have preſented every Perſon, that ſtood idly or talked in the Church Porch, or walked in the Church or Churchyard during the Time of Prayer or Preaching, or any other ſacred Duties; and for that the ſaid *John Gardiner* then and there refuſed to take that Oath, you by your Officer had pronounced Sentence of Excommunication againſt the ſaid *John Gardiner*, (to wit) the Day and Year laſt above mention'd at *Wickham* Market aforeſaid, in Contempt of us, and to the manifeſt Damage, Prejudice and Impoveriſhment of the ſaid *John Gardiner*, and contrary to the Form and Effect of the Laws and Statutes of this our Kingdom of *Great Britain*; We therefore willing, as we are by the Obligations of our Coronation Oath bound, to maintain the Laws of this Kingdom, prohibited you, firmly enjoining you, that you ſhould not bring before you the Plea and Sentence aforeſaid, as to charging and impoſing the Oath aforeſaid

ſaid upon the ſaid *John Gardiner*, nor then afterwards attempt any thing further therein, but that you ſhould immediately diſcharge and diſſolve all Decrees and Sentences, if any there had been againſt the ſaid *John Gardiner*, by reaſon of his not taking the ſaid Oath; and that you ſhould wholly releaſe and abſolve him the ſaid *John Gardiner* from his ſaid Sentence of Excommunication, and all Proceſs thereupon made; but inaſmuch as it appears to our Juſtices at *Weſtminſter*, that our Writ of Prohibition was not rightly but unduly iſſued, therefore we do now ſignify to you, that you may now lawfully proceed and do farther in the Premiſſes before you, what you ſhall know to belong to the Eccleſiaſtical Laws, our Prohibition to the contrary notwithſtanding, *&c.*

A **Conſultation** after a **Prohibition** for not admitting Legal Proof of the Subſtraction of Tithes.

(5.) **George** the Second, *&c.* To the Worſhipful Sir *D. D.* Knt. Doctor of Laws, *&c. Greeting:* Whereas it was lately made appear to us in our Court before our Juſtices at *Weſtminſter* on the Behalf of *W. D.* That whereas within the Pariſh of *F.* in the County of *C.* there was, and Time out of Mind hath been as well a Rectory of the Pariſh Church of *F.* aforeſaid, as a Vicarage of the ſame Church, endowed with certain Tithes and other Emoluments, within that Pariſh the Bounds and Tithable Places of the ſame Pariſh growing and ariſing. And whereas alſo (as it is ſuggeſted) that nevertheleſs one *T. L. &c.* not ignorant of the Premiſſes, but contriving and intending againſt the due Form of the Laws of this Kingdom, and againſt the Form of the Statute in ſuch Caſe made and provided, unjuſtly to grieve, oppreſs and vex the ſaid *W. D.* in the Court Eccleſiaſtical before you of and for the Subſtracting, *&c.* have drawn into Plea, and in the ſame Court Eccleſiaſtical before you, by reaſon of the Premiſſes, have moſt unjuſtly bound him the ſaid *W.* to appear, and to anſwer him the ſaid *T. B.* of and upon the Premiſſes. And although he the ſaid *W.* each Year of the Years aforeſaid, at *F.* aforeſaid,

ſaid, was ready and offered to pay to him the ſaid *T.* &c. (as in the Suggeſtion) and although alſo he the ſaid *W.* in the afor ſaid Court Eccleſiaſtical before you all and ſingular the Premiſſes in the Suggeſtion aforeſaid above ſpecified in his Diſcharge of the Payment of the Tithes aforeſaid by the aforeſaid *T.* in the aforeſaid Court Eccleſiaſtical demanded, as aforeſaid, againſt him the ſaid *T.* hath pleaded, and the ſame by undeniable Teſtimony and Proof hath offered to prove, yet you have altogether refuſed to admit or receive his Plea, Allegation and Proof: And the aforeſaid *T.* by a definitive Sentence of the aforeſaid Court Eccleſiaſtical of and upon the Premiſſes, doth with all his Might endeavour and daily contrive to have the ſaid *W.* condemned, and to be compelled to the Payment of the Tithes aforeſaid demanded in the ſaid Eccleſiaſtical Court, in Contempt of us, and to the great Damage, Prejudice, Impoveriſhment, and manifeſt Grievance of the ſaid *W.* and againſt the Form of the Statutes, Cuſtoms and laudable Preſcriptions aforeſaid: Whereupon the ſaid *W.* humbly imploring the Aid and kind Aſſiſtance of our Court lately pray'd Relief, and our Writ of Prohibition to be directed to you, by which we lately prohibited you and every of you, that you ſhould not hold Plea before you againſt the ſaid *W.* upon the Premiſſes, nor ſhould attempt any Thing further therein, which might any Ways tend to the Damage, Prejudice or Grievance of him the ſaid *W.* under the Danger of incurring the Penalties of Violators of our Law, and that if ye had pronounced any Sentence againſt him, you ſhould recal it, and altogether abſolve him, by Virtue of which our ſaid Writ of Prohibition, you did forbear and have hitherto deſiſted from any farther Proceeding in the ſaid Eccleſiaſtical Court in the Cauſe aforeſaid, to the great Loſs and manifeſt Prejudice of the ſaid *T. L.* and of the Eccleſiaſtical Juriſdiction; ſo that inaſmuch as it ſufficiently appears to our ſaid Juſtices at *Weſtminſter*, that the Cognizance of the Cauſe aforeſaid belongs to the Eccleſiaſtical Court, therefore we do now ſignify

unto you, that you may further proceed in the Cauſe aforeſaid between the Parties aforeſaid, with all convenient Expedition, according to the Eccleſiaſtical Laws, and to do further in the Premiſſes what you know to belong to the Eccleſiaſtical Juriſdiction; our ſaid Writ of Prohibition therein directed to you to the contrary in any wiſe notwithſtanding. Witneſs, &c.

Continuances.

In Order to ſhew the ſeveral Continuances, *it will be proper to ſpeak of the Nature of the* Proceedings *on the* Record. *The firſt Part of the Entry is the* Memorandum, *which is to denote of what Term the Bill was filed, and is thus, where the Bill is filed the* ſame Term, *wherein the Plaintiff declares, and* Iſſue *is join'd; for the Proceedings are always enter'd upon a Roll of* that Term *wherein the* Iſſue *was joined.*

Memorandum of the ſame Term.

(1.) *Devon*, ff. BE it remember'd, that on *Wedneſday* [*the firſt Day of the Term*] next after three Weeks of St. *Michael*, this ſame Term *A. B.* [*the Plaintiff*] came before our Sovereign Lord the King at *Weſtminſter*, and brought here into this Court of our ſaid Sovereign Lord the King at *Weſtminſter* then there his Bill againſt *C. D.* in the Cuſtody of the Marſhal of the Marſhalſea of our Sovereign Lord the King before the King himſelf in an Action of Debt [*Treſpaſs, Treſpaſs upon the Caſe, Treſpaſs, Aſſault and Impriſonment*, &c. *according to the Nature*

Nature of the Action] and there are Pledges for profecuting, to wit, *John Doe* and *Richard Roe*, which Bill follows in theſe Words (to wit) *A. B.* complains of *C. D.* in the Cuſtody of the Marſhal, [*ſo go on with the Declaration*].

If the Bill was of another *Term than in that wherein you declare, then the* Memorandum *muſt be thus:*

(2.) *Devon*, ſſ. Be it remember'd, that heretofore, (to wit) in * *Michaelmas-Term* [or *in the Term of St.* Michael] laſt paſt, *A. B.* came before our Sovereign Lord the King at *Weſtminſter*, by *C. D.* his Attorney, and brought into this Court of our ſaid Sovereign Lord the King at *Weſtminſter* then there his Bill againſt *E. F.* [*the reſt as above*].

Memorandum of another Term.

* If it be of above 4 Years ſtanding, then you ſay, Heretofore in Eaſter-Term in ſuch a Year of the King.

If the Words then there *are thought rough and uncouth you may ſay*, and then brought there into this Court of our ſaid Sovereign Lord the King at *Weſtminſter* his Bill againſt *E. F. But we apprehend the Meaning of the Words* tunc ibidem *made uſe of in this Entry, is to ſhew, that at the Time of the Plaintiff's filing his Bill in the Court of King's Bench, the Court was at* that Time *held at* Weſtminſter; *for the Court of King's Bench is* Itinerant, *and follows the Place of Reſidence of the King, and therefore in Pleading a Matter to be done in this Court it has been uſual to ſay,* [that Court being at that Time held at *Weſtminſter*] *and if this be the true Meaning of the Words* tunc ibidem, *the Form above is moſt proper.*

When the Bill is ſuppoſed to be filed of the ſame *Term, then there is* no *Imparlance, but otherwiſe there* is, *and ſuch Imparlance is as follows:*

Imparlance.

(3.) And now here at this Day (to wit) on *Monday* next after Eight Days of St. *Hillary*, in this ſame Term, to which Day the ſaid *(Defendant)* had leave to imparl, and then to plead to the ſaid Bill, as well the ſaid *A. B.* by his ſaid Attorney, as the ſaid *C. D.* by *E. T.* his Attorney, come before our Sovereign Lord the King at *Weſtminſter*, and the ſaid *C.* defends the Force and Injury, when, &c. [*ſo go on with the Plea*].

The Form of a Memorandum of a Record delivered out of Chancery into the King's Bench. 2 Saund. 6.

(4.) *England*, ſſ. Be it remember'd, That *Charles* Lord *Talbot*, his Majeſty's Lord High Chancellor of *Great Britain*, on *Monday* in three Weeks of *Eaſter*, in this ſame Term before our ſaid Sovereign Lord the King at *Weſtminſter*, with his own Hands delivered here into the Court of our ſaid Sovereign Lord the King a Record had before our ſaid Sovereign Lord the King, now in his Court of Chancery at *Weſtminſter* in the County of *Middleſex*, in theſe Words: *ſſ.* Pleas before our Sovereign Lord the King now in his Court of Chancery at *Weſtminſter* in the County of *Middleſex*, of the Term of the *Holy Trinity*, [or *of* Trinity Term] in the 8th Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God of *Great Britain*, *France*, and *Ireland* King, Defender of the Faith, &c. *Middleſex*, ſſ. [*then recite the Writ of* Scire Facias].

When Iſſue *is joined, the* next *Act of the Court is to award the Writ of* Venire *to cauſe the Sheriff to ſummon a* Jury *to try the Cauſe, and the ſame is thus awarded after the Words*, and the ſaid *A. B.* does likewiſe the ſame.

(5.) Therefore let a Jury appear for that Purpoſe, before our Sovereign Lord the King at *Weſtminſter* [*the laſt Day of the Term the Iſſue is joined in, if it be a Country Cauſe; but if it be a Cauſe to be tried in* London *or* Middleſex, *then of ſome ſhort Return before the Day of Sittings, tho' ſome*

ſame have ſaid of the Day of the Sittings, concluding) and who neither, &c. to recognize, &c. becauſe as well, &c. The ſame Day is given to the Parties aforeſaid to be there, &c.

If Iſſue *be not join'd in* that *Term, then it is proper to enter the* Continuances *of the Bill, thus:*

(6.) And now here at this Day (that is to ſay) on *Tueſday* next after the Octaves of St. *Hillary* this ſame Term, as well the ſaid *A. B.* by his ſaid Attorney, as the ſaid *C. D.* by *Henry Cruwys* his Attorney, appear before our Sovereign Lord the King at *Weſtminſter*, and there the ſaid *C. D.* prays Leave to imparl to the ſaid Bill, until on next after fifteen Days of the Feaſt of *Eaſter*, and it is granted to him, &c. At which Day the Parties aforeſaid by their ſaid Attornies appear before our Sovereign Lord the King at *Weſtminſter*, and the ſaid *C. D.* prays a further Day to anſwer thereto, and it is granted to him, &c. and thereupon a further Day is therefore given to the Parties aforeſaid before our Sovereign Lord the King at *Weſtminſter*, till on *Monday* next after the Morrow of the Aſcenſion of our Lord, that is to ſay, to the ſaid Defendant to imparl to the ſaid Bill, and then to plead, &c. at which Day the Parties aforeſaid appear before our Sovereign Lord the King at *Weſtminſter* by their Attornies aforeſaid; and the ſaid Defendant prays a further Day to imparl thereto; and hereupon a further Day is given to the ſaid Parties, &c. before our Sovereign Lord the King at *Weſtminſter*, till *Friday* next after the Morrow of the *Holy Trinity* (that is to ſay) to the ſaid *C.* to imparl, and then to plead, &c. At which Day, &c. [*ſo going on to continue it from the* laſt *Day of every Term to the* firſt *Day of the next Term, and then to the laſt Day of that Term, and then to the firſt Day of the next Term, and ſo on*].

In

In the Entry of the Roll, after the Venire *is continued to the Term in which the Record of* Niſi Prius *is made, by entering, that the Sheriff had not returned the Writ of* Venire; *if it be not tried in that Term, then you enter the Award of* Diſtringas *in the Term in which it is tried, thus:*

(7.) At which Day, as well the ſaid *(Plaintiff)* as the ſaid *(Defendant)* came before our ſaid Sovereign Lord the King at *Weſtminſter*, by their ſaid Attornies; and the Sheriff returned the ſaid Writ of *Venire* ſerved and executed in all Reſpects, together with the Panel of the Names of the Jurors, of which * none of them, *&c.* Therefore the Sheriff is commanded, that he diſtrain the ſaid Jurors by all their Lands, *&c.* and that of the Iſſues, *&c.* ſo that he have their Bodies before our Sovereign Lord the King [*ſuch a Day, that is, the Day of the Return*] unleſs his ſaid Majeſty's Juſtices, appointed to hold the Aſſizes in the County aforeſaid, ſhall come before at the Caſtle at *Wincheſter* in the ſaid County, on *Wedneſday* the 15th Day of *March*, according to the Form of the Statute, *&c.* through the Default of the Jurors, *&c.* at which Day as well the ſaid *(Plaintiff)* as the ſaid *(Defendant)* by their Attornies aforeſaid, appear before our Sovereign Lord the King at *Weſtminſter*, and his ſaid Majeſty's Juſtices of Aſſize, before whom, *&c.* have ſent [or *returned*] hither their Record had before them in theſe Words: *Afterwards at the Day and Year within contained*, &c. [*ſo go on with the* Poſtea].

* That is, None are related to the Parties, &c. 2 Saund. 333.

If the Cauſe be not tried in that Term, *in which* Iſſue *was joined, then the* Venire *is continued by* (Vic' non miſit Breve, *&c.*) *thus:*

(8.) *After the Words*, the ſame Day is given to the Parties aforeſaid, *you go on thus:* At which Day came the Parties aforeſaid, and the Sheriff hath

hath not returned the Writ; therefore the Sheriff is as before commanded, that he cauſe to come here on next after fifteen Days of the Feaſt of *Eaſter* twelve, *&c.* to recognize in the Manner aforeſaid; at which Day the ſaid Parties, by their Attornies aforeſaid, come [or *appear*] before our Sovereign Lord the King at *Weſtminſter*, and the Sheriff hath not return'd the Writ thereupon; therefore, as before, let a Jury therein appear before our Sovereign Lord the King at *Weſtminſter*, on *Monday next after the Morrow of the Aſcenſion of our Lord*, and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.* The ſame Day is given to the Parties aforeſaid. Vic' non miſit breve.

And in the Entry of the Roll after the Continuances of the Venire, *you take no Notice of the* Diſtringas, *till you come to the Term in which the Record of* Niſi Prius *is*, i. e. *the Term in which the Cauſe is tried, which having done, then you ſet forth the* Poſtea *thus:*

(9.) Afterwards the Proceſs [or *Proceedings*] is [or *are*] continued between the ſaid Parties in the ſaid Action [or *of the Plea aforeſaid*] by the Jury's being reſpited therein before our Sovereign Lord the King at *Weſtminſter*, till *Wedneſday* next after three Weeks of the Day of St. *Michael*, from thence next following, unleſs his Majeſty's Juſtices, appointed to hold the Aſſizes in the ſaid County, ſhould come before on *Monday* the 6th Day of *Auguſt*, at *Taunton-Caſtle* in the County aforeſaid, by Virtue of the Statute, *&c.* through the Default of the Jurors, *&c.* At which *Wedneſday* next after three Weeks from the Day of St. *Michael*, came the ſaid *A. B.* by his ſaid Attorney; and the ſaid Juſtices of our ſaid Sovereign Lord the King [or *his Majeſty's Juſtices*] before whom, *&c.* have returned hither their Record had before them in theſe Words: Afterwards on the Day and at the Place within contained, [*and ſo go on with the* Poſtea].

If Judgment *is not ſigned of that Term that the* Poſtea *is returnable, but that by moving the Court to arreſt the Judgment, or by arguing a Special Verdict, there are* Intervening *Terms between that and the Time of obtaining the* final *Judgment, then the Proceedings are to be thus* continued *after the* Finding of the Jury, *that the Defendant had undertaken in ſuch Manner and Form as the Plaintiff alledged, or whatever the* Iſſue *is, the Entry muſt be thus:*

(10.) And becauſe the ſaid Juſtices of this Court are not yet determined what Judgment to give of and concerning the Premiſes, a Day is thereupon given to the Parties aforeſaid, until ſuch a Day, *&c.*

A Continuance by a Curia adviſare vult, where nul tiel Record is pleaded. C. B.

(11.) ——— And this the ſaid *E.* is ready to verify by the Record itſelf, and prays, that the Term and Roll may be ſeen and inſpected by his Majeſty's Juſtices of the Common Pleas here; but becauſe his ſaid Majeſty's Juſtices are not yet ready here to inſpect and examine the Record aforeſaid, a Day therefore is here given to the ſaid Parties till on the Morrow of the Aſcenſion of our Lord to hear their Judgment thereon, for that his ſaid Majeſty's Juſtices here are not yet determined therein, *&c.*

A Continuance by an Idem dies datus, or a Day being given in an Inferior Court by Conſent of the Parties. 1 Saund. 89. Ex aſſenſu partium.

(12.) ——— And thereupon, by the Conſent of the Parties aforeſaid, a further Day is given them [or *to the Parties aforeſaid*] in the ſaid Action till the Toll-Court of our ſaid Sovereign Lord the King of the ſaid City, to be held here in the Guild-hall aforeſaid, on *Monday* the 27th Day of *June* next to come, ſaving to the Parties all Things in the State they now are; at which Toll-Court of the ſaid City, held in the Guild-hall aforeſaid before Sir *J. B.* and *R. S.* then Sheriffs of the County of the ſaid City, on *Monday* the 27th Day of *June* in the 16th Year aforeſaid, as well the ſaid *T.* and *J.* as the ſaid *W.* came in their proper Perſons, *&c.*

(13.)

(13.) ——— And thereupon the ſaid *T.* and *J.* crave Leave to imparl to the Plea aforeſaid of the ſaid *W. P.* here till the next Toll-Court of our ſaid Sovereign Lord the King of the City aforeſaid, to be held here in the Guild-hall aforeſaid, as well before the Sheriffs of the County aforeſaid, as the Bailiffs, Mayor and Commonalty of the ſame City, according to the Cuſtom of the ſaid City, on *Monday* the 4th Day of *July* next to come, and it is granted them, *&c.* The ſame Day is given to the ſaid Parties to be here, *&c.* at which next Toll-Court of our ſaid Sovereign Lord the King of the City aforeſaid held as well before the ſaid Sheriffs of the County of the ſaid City, as the Bailiffs, Mayor and Commonalty of the ſaid City, according to the Cuſtom of that City, on the ſaid *Monday* the 14th Day of *July* in the 16th Year aforeſaid, as well the ſaid *T.* and *J.* as the ſaid *W.* came by their Attornies aforeſaid; and thereupon the ſaid *T.* and *J.* reply, *&c.*

A Continuance by an Imparlance given in an Inferior Court to reply according to the Cuſtom, &c.

The ſeveral Continuances to be entered on the Record, where there is a Demurrer joined as to Part, and an Iſſue as to Part, after the Joinder in Demurrer (the Iſſue being joined before) you go on thus:

(14.) But becauſe the Court of our ſaid Sovereign Lord the King now here have not as yet conſider'd what Judgment to give of and concerning the Premiſſes, whereof the ſaid Parties have ſubmitted themſelves to the Judgment of the Court, a Day therefore is given to the ſaid Parties to be before our ſaid Sovereign Lord the King at *Weſtminſter*, until *Wedneſday* next after fifteen Days of the *Holy Trinity*, to hear their Judgment of and upon the Premiſſes; inaſmuch as the ſaid Court of our ſaid Sovereign Lord the King is not yet ready, *&c.* ——— And as to the Trial of the Iſſue above joined between the ſaid Parties, to be tried by the Country, let a Jury come

On Demurrers.

The Award of the Venire tam ad triandum quam ad inquirendum.

come before our ſaid Sovereign Lord the King at *Weſtminſter*, on the ſame Day; and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame Day is given to the ſaid Parties to be there, &c. At which Day the ſaid Parties by their ſaid Attornies came before his ſaid Majeſty; but becauſe his ſaid Majeſty's Court here are not as yet determined what Judgment to give of and upon the Premiſſes, whereof the ſaid Parties have ſubmitted themſelves to the Judgment of this Court, a Day therefore is given to the ſaid Parties to be before our ſaid Sovereign Lord the King at *Weſtminſter*, until *Monday* next after three Weeks of St. *Michael*, to hear the Judgment of this Court of and upon the Premiſſes, becauſe this Court are not as yet ready, &c. And as to trying of the Iſſue above joined between the ſaid Parties to be tried by the Country, the Sheriff hath not returned the Writ: Wherefore, as before, let a Jury come before our ſaid Sovereign Lord the King at *Weſtminſter*, at the ſaid Day; and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame Day is given to the ſaid Parties to be there, &c. At which Day came before our ſaid Sovereign Lord the King at *Weſtminſter*, the ſaid Dean and Chapter of the Royal Free Chappel of St. *George* within *Windſor-Caſtle*, by *D. V.* their Attorney, and the ſaid *C.* by his ſaid Attorney; and becauſe this Court have not as yet conſidered what Judgment to give of and upon the Premiſſes ſubmitted to the Judgment of this Court by the ſaid Parties, a Day is given them to be before his ſaid Majeſty at *Weſtminſter*, until *Monday* next after the Octaves of St. *Hillary*, to hear their Judgment of and upon the Premiſſes; inaſmuch as this Court is not yet ready, &c. And as to the Iſſue above joined by the ſaid Parties to be tried by the Country, the Sheriff hath not returned the Writ; therefore, as it has been many Times before commanded, let a Jury come before his ſaid Majeſty at *Weſtminſter* at the ſaid Day; and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame Day is given to

Vicecomes non miſit breve.

The Award of an Alias Venire.

Continuance.

Vicecomes non miſit Breve.

Plures Venire.

the ſaid Parties to be there, &c. At which Day came the ſaid Parties, by their ſaid Attornies, before our ſaid Sovereign Lord the King at *Weſtminſter*; whereupon all and ſingular the Premiſſes ſubmitted by the ſaid Parties to the Judgment of this Court, being viewed and fully underſtood by this Court, and mature Deliberation being thereon had; inaſmuch as it appears to this his ſaid Majeſty's Court here, that the ſaid *C.*'s Plea as to the ſaid 208 *l.* Reſidue of the ſaid 260 *l.* pleaded in the Manner and Form aforeſaid, and the Matters therein contained, are not ſufficient in Law to preclude the ſaid Dean and Chapter from having their ſaid Action againſt him in the Manner aforeſaid; it is therefore conſidered, that the ſaid Dean and Chapter do recover againſt the ſaid *C.* the ſaid Sum of 208 *l.* Part of the ſaid 260 *l.* But becauſe it is neceſſary, that there ſhould be an intire Taxation of the Damages in this Cauſe, therefore be the Taxation of the Damages as to the ſaid 208 *l.* ſtay'd till the ſaid Iſſue above joined between the ſaid Parties to be tried by the Country is determined: And as to the Trying of the ſaid Iſſue, the Sheriff hath not returned the Writ; therefore as well to try the ſaid Iſſue, as to inquire what Damages the ſaid Dean and Chapter have ſuſtained by Means of detaining the ſaid Debt, let a Jury come before his ſaid Majeſty at *Weſtminſter*, on *Tueſday* next after fifteen Days of St. *Hillary*; and who neither, &c. to recognize, &c. becauſe as well, &c. The ſame Day is given to the Parties to be there, &c. Afterwards the Proceedings thereon being continued between the ſaid Parties in the ſaid Action, by the ſaid Jury, being reſpited between them before his ſaid Majeſty at *Weſtminſter*, until *Monday* next after the Octaves of the Purification of the Bleſſed Virgin *Mary* then next following, unleſs his ſaid Majeſty's truſty and well-beloved Sir *J. K.* Knt. his ſaid Majeſty's Chief Juſtice appointed to hold Pleas in the ſaid Court of our ſaid Sovereign Lord the King, before the King himſelf, ſhall come before on *Saturday* [*ſuch a Day of the Month*] at

Judgment at the Day in Bank, that the Plea as to Part is not good.

The final Judgment.

A Unica fiat taxatio damnorum.

Vic' non miſit breve.

Venire tam ad triandum quam ad inquirendum, as to the reſt

The Continuance of the Proceedings of Niſi Prius.

at *Guildhall*, *London*, according to the Form of the Statute, &c. for the Default of the Jurors, &c. At which Day the ſaid Dean and Chapter, by the ſaid *D. V.* their Attorney, came before our ſaid Sovereign Lord the King at *Weſtminſter*: And

The Return of the Poſtea.

the ſaid Chief Juſtice, before whom, &c. returned into this Court the Record had before him in theſe Words, that is to ſay, Afterwards the Day and Year within contained, came before his ſaid Majeſty's truſty and well-beloved Sir *J. K.* Knt. the Chief Juſtice within-mentioned, and his Aſſociate *J. S.* Gent. according to the Form of the Statute, &c. the within named Dean and Chapter of the ſaid Royal Free Chapel within the Caſtle of *Windſor*, by their ſaid Attorney within-written, and the ſaid *C.* though ſolemnly called, did not

The Defendant's Default.

appear, but made Default; therefore the Jurors of the Jury within-mentioned are taken againſt him by Default; and ſome of the Jury that were ſummoned, to wit, *W. S.* &c. came and were ſworn upon that Jury; and becauſe the reſt of the Jury have not appeared, therefore others of the Byſtanders choſen for that Purpoſe by the within-written Sheriffs of *London*, at the Requeſt of the Dean and Chapter aforeſaid, and by the Order of the ſaid Chief Juſtice, are a-new appointed, the Names of whom are filed in the within-written Panel, according to the Form of the Statute in that Caſe made and provided; and the Jury ſo newly appointed, to wit, *N. C.* and *M. B.* being ſummoned likewiſe came, who being elected, try'd, and ſworn to declare the Truth of the within Contents, together with the ſaid other Jurors before impanelled and ſworn, do declare upon their

The Jurors Default.

A Tales awarded.

The Verdict of the Jury.

Oaths, that the ſaid *C.* owes to the ſaid Dean and Chapter of the ſaid Royal Free Chapel within the ſaid Caſtle of *Windſor*, the ſaid 52 *l.* Parcel of the ſaid 260 *l.* within-mention'd for Rent of the firſt Year of the within mentioned five Years, ending at the Feaſt of St. *Michael* the Archangel, in the 17th Year of the Reign of his preſent Majeſty, as the ſaid Dean and Chapter have within complain'd thereof againſt him; and they

aſſeſs the Damages of the ſaid Dean and Chapter, occaſioned by the Detaining of the Debt within-written over and beſides their Expences and Coſts by them laid out and expended in this Suit, to 10 *l.* and for their Expences and Coſts to 52 *s.* 4 *d.* Therefore it is conſidered, [or *adjudged*] that the ſaid Dean and Chapter do recover againſt the ſaid *C.* the ſaid 52 *l.* Reſidue of the ſaid 260 *l.* and the ſaid Damages by the ſaid Jury above aſſeſſed in the Manner aforeſaid, and alſo 17 *l.* 6 *s.* 8 *d.* for their Expences and Coſts adjudged to them by this Court by way of Increaſe by their Conſent, which ſaid Damages in the whole amount to 30 *l.* and be the ſaid *C.* amerced, &c. The final Judgment of the Court.

If your Writ of Inquiry *be not executed before the Return firſt awarded by the Court, ſo that you are obliged to ſue out an* Alias *Writ, then the Entry is thus:*

(15.) *After the Words*, and the ſaid Inquiſition which, &c. he return to our ſaid Sovereign Lord the King at *Weſtminſter*, on *Friday* next after fifteen Days of St. *Hillary*, under the Seal, &c. and the Seals, &c. together with the Writ directed to him for that Purpoſe, &c. the ſame Day is given to the ſaid *(Plaintiff)* to be there, &c. *you go on:* At which Day the ſaid *(Plaintiff)* comes before our ſaid Sovereign Lord the King at *Weſtminſter* by his ſaid Attorney, and the Sheriff hath not returned the Writ thereon; therefore the Sheriff is, as before, commanded, that by the Oaths of honeſt and lawful Men of his Bailiwick, he diligently inquire in the Manner aforeſaid, and that he return the Inquiſition, which, &c. to our Sovereign Lord the King at *Weſtminſter*, on [*ſuch a Day of the Return*] under the Seal, &c. and the Seals, &c. together with his Majeſty's Writ directed to him for that Purpoſe. The ſame Day is given to the ſaid *(Plaintiff)* to be there, &c. The Continuance of a Writ of Inquiry.

Continuances in Actions of Account.

(16.) Becauſe as well, &c. At which Day the ſaid Parties come here, but the Sheriff hath not returned the Writ, therefore the ſaid Sheriff is (as before) commanded, that he cauſe to come here in three Weeks from the Day of the *Holy Trinity* twelve, &c. to recognize in the Manner aforeſaid: At which Day the ſaid Parties come here, &c. but the Sheriff hath not returned the Writ, therefore the ſaid Sheriff is (as before) commanded, that he cauſe to come here in three Weeks from the Day of the *Holy Trinity*, twelve, &c. to recognize in the Manner aforeſaid, &c. At which Day the Jury between the ſaid Parties, were reſpited in the ſaid Action between them here, until this Day (that is to ſay) in three Weeks from the Day of St. *Michael* then next following, unleſs the Juſtices of our Sovereign Lord the King [or *his Majeſty's Juſtices*] aſſign'd [or *appointed*] to hold the Aſſizes in the ſaid County by Virtue of the Statute, &c. had come before on *Monday* the fifteenth Day of *Auguſt* laſt paſt, at *Horſham* in the County aforeſaid: And now here at this Day the ſaid *Richard* (i. e. *the Plaintiff*) appears by his ſaid Attorney; and the ſaid Juſtice of Aſſize before whom, &c. (i. e. *before whom the ſaid Cauſe was tried*) hath ſent [or *returned*] hither the Record in theſe Words: *Afterwards on the Day and at the Place within contained* [or *within-mentioned*], &c.

Continuances by a Day being given to the Defendants to make up their Account.

(17.) *After the* Recognizance *is ſet forth, which the Defendants and their Bail had enter'd into, that the Defendants ſhould account, then come theſe Continuances:* And afterwards as well the ſaid *J. B.* and *J. A.* [i. e. *the Plaintiffs*] by their ſaid Attorney, as the ſaid *J. E.* and *D. T.* [i. e. *the Defendants*] came in their proper Perſons; and the ſaid *J. E.* and *D. T.* pray'd a further Day to make up and bring in their ſaid Account, before the ſaid Auditors at the King's Bench Office in the *Inner Temple*, *London*, until *Monday* next after the Octaves of St. *Hillary*, to account

account, &c. and the ſame is granted by the ſaid Auditors, &c. At which Day, (to wit) on *Monday* next after the ſaid Octaves of St. *Hillary*, as well the ſaid *J. B.* and *J. A.* as the ſaid *J. E.* and *D.* in their own Perſons, then and there came and pray'd a further Day to make up and perfect their ſaid Accounts before the ſaid Auditors of and concerning the Premiſſes, at the ſaid King's Bench Office in the *Inner Temple*, *London*, that is to ſay, till *Saturday* next after the Octaves of the Purification of the Bleſſed Virgin *Mary*; at which Day, as well the ſaid *J. B.* and *J. A.* by their ſaid Attorney, as the ſaid *J. E.* and *D.* in their own Perſons, came before our Sovereign Lord the King at *Weſtminſter*; and the ſaid Auditors, brought here into this Court the ſaid Account, &c.

The Continuances of a Bill of Middleſex.

(18.) The Defendant in this Bill within contained prays a Day to imparl thereto; and it is granted to him, &c. and thereupon a Day is given to the Parties within-written to imparl, and then to anſwer before our Sovereign Lord the King at *Weſtminſter*, until *Friday* next after the Morrow of the *Holy Trinity* (to wit) the aforeſaid Defendant to imparl to the aforeſaid Bill, and then to plead, &c. At which Day, before our ſaid Sovereign Lord the King at *Weſtminſter*, came the Parties aforeſaid, by their Atornies within contained, and the ſaid Defendant prays a further Day to imparl, &c. and it is granted to him, &c. And thereupon a farther Day is therefore given to the aforeſaid Parties before our ſaid Sovereign Lord the King at *Weſtminſter*, until *Monday* next after three Weeks of St *Michael*, (to wit) to the aforeſaid Defendant to imparl to the aforeſaid Bill, and then to plead, &c. At which Day, before our ſaid Sovereign Lord the King at *Weſtminſter*, came the ſaid Parties by their Attornies within contained; and the ſaid Defendant prays a further Day to imparl; and it is granted to him, &c. And thereupon a farther Day is therefore given to the aforeſaid Parties, before our ſaid Sovereign Lord the King at *Weſtminſter*, until *Monday* next after the Octaves

taves of St. *Hillary*, (to wit) to the aforeſaid Defendant to imparl to the aforeſaid Bill, and then to plead, &c. At which Day came the ſaid Parties before our ſaid Sovereign Lord the King at *Weſtminſter*, by their Attornies within contained; and the ſaid Defendant prays a further Day to imparl; and it is granted to him, &c. And thereupon a further Day is given to the Parties aforeſaid to appear before our ſaid Sovereign Lord the King at *Weſtminſter*, until *Wedneſday* next after fifteen Days of *Eaſter*, (to wit) to the aforeſaid Defendant to imparl to the aforeſaid Bill, and then to plead, &c. At which Day, before our ſaid Sovereign Lord the King at *Weſtminſter*, came the Parties aforeſaid by their Attornies within contained; and the ſaid Defendant prayeth a further Day to imparl, &c. and it is granted him, &c. And thereupon a farther Day is given to the Parties aforeſaid to appear before our ſaid Sovereign Lord the King at *Weſtminſter*, until *Friday* next after the Morrow of the *Holy Trinity*, (to wit) to the ſaid Defendant to imparl to the aforeſaid Bill, and then to plead, &c.

Continuances in the Court of the Grand Seſſions in Wales in Abatement —— A Judgment in Abatement —— A Reſpondeas Ouſter —— A Plea in Chief —— A Counterplea of a Voucher to Warranty —— A Demurrer to the Counterplea —— A Joinder in Demurrer —— Judgment, that the Voucher to Warranty doth not lie in that Caſe —— Judgment to recover Seiſin.

Continuances in Abatement. 1 Saund. 31.

(19.) And the ſaid *E.* and *L.* inaſmuch as they have above alledged ſufficient Matter in Law to *quaſh the ſaid Writ, which they are ready to verify, which ſaid Matter the ſaid *W. V.* doth not deny, nor any wiſe anſwer thereto, but altogether refuſeth to admit the ſame to be †verify'd, as before, prays Judgment, and that the ſaid Writ may be quaſhed: And becauſe the Juſtices here will adviſe themſelves of and upon the Premiſſes, before they give Judgment thereupon, a Day is given to the ſaid Parties here, until on *Monday* in the next Great Seſſions of our Lord the King in the County aforeſaid, for hearing their Judgment thereupon, for that the Juſtices here are not adviſed, *&c.* At which ſaid *Monday* in the ſaid next Great Seſſions of our Lord the King of the County aforeſaid, to be held at *Dolgelly* in the ſaid County before *Timothy Littleton*

* *Ad Caſſandum breve.*

† *The other Party having demurred to the Defendant's Plea, by which he draws the Matter from a Trial by Proof, it is therefore well ſaid, that he refuſed to admit ſuch Verification* [*or rather* the Matter pleaded to be verify'd].

tleton Serjeant at Law, Juſtice, &c. and *John Griffith* Eſq; another of the Juſtices, &c. on *Monday* (to wit) the 16th Day of *September* in the 8th Year of the Reign of our ſaid Sovereign Lord the King, &c. came as well the ſaid *W.* as the ſaid *E.* and *L.* by their ſaid Attornies; and becauſe the ſame Juſtices here are willing further to adviſe themſelves of and upon the Premiſſes, before they give Judgment thereupon, a Day is given to the ſaid Parties till *Wedneſday* in the next Great Seſſions of our Lord the King of the County aforeſaid, for hearing their Judgment thereupon, for that the ſaid Juſtices here are not yet adviſed thereof, &c. At which ſaid *Wedneſday* in the ſaid next Great Seſſions of the Lord the King of the County aforeſaid, held at *Delogelly* in the ſaid County, before *T. L.* Serjeant at Law, Juſtice, &c. and the ſaid *J. G.* Eſq; another of the Juſtices, &c. (to wit) on the 9th Day of *October* in the Year of the Reign of his preſent Majeſty, came as well the ſaid *W.* as the ſaid *E.* and *L.* by their ſaid Attornies; and hereupon the ſaid Plea of the ſaid *E. L.* pleaded to quaſh the Writ of the ſaid *W.* being ſeen and fully underſtood by the Juſtices, it appears to the ſaid Juſtices, that the Plea pleaded in the Manner and Form aforeſaid, and the Matter therein contain'd, are inſufficient in Law to quaſh the Writ of the ſaid *W.* Therefore it is conſider'd, that the ſaid Writ be adjudged good, and that the ſaid *E.* and *L.* do anſwer over, &c. [or *do plead in chief*] &c. and hereupon the ſaid *E.* and *L.* by their ſaid Attorney, come and defend their Right, when, &c. and Vouch thereof to Warranty *J. S.* of *M.* in the County of *Cornwall*, Gentleman, who hath not any Lands or Tenements, within the ſaid County of *Merioneth*, but only in the ſaid County of *Cornwall*, to be ſummon'd in the ſaid County of *Cornwall*, by the Aſſiſtance of this Court of our ſaid Sovereign Lord the King, &c. And thereupon a Day is given by this Court, as well to the ſaid *W.* as to the ſaid *E.* and *L.* in the Plea aforeſaid, &c. here until *Monday*

The Judgment in Abatement.

A Reſpondeas Ouſter.

A Plea in Chief.

Voucher to Warranty.

Continuances.

Monday in the next Great Seſſions of our ſaid Lord the King, of the County aforeſaid; at which ſaid *Monday* in the ſaid next Great Seſſions of our ſaid Lord the King of the County aforeſaid, held at *Bale* in the ſaid County, before *Timothy Littleton*, Juſtice, &c. on *Monday*, to wit, the 8th Day of *October*, in the 8th Year of the Reign of our ſaid Lord the King, came as well the ſaid *W.* as the ſaid *E.* and *L.* by their ſaid Attornies, and thereupon the ſaid *W.* by his ſaid Attorney, ſaith, that the ſaid *E.* and *L.* ought not to be admitted to ſuch Voucher to Warranty the ſaid *J. S.* becauſe he ſaith, that the ſaid *J. S.* is not named in the ſaid Writ; whereupon he prays Judgment, whether the ſaid *E.* and *L.* ought to be admitted to ſuch Voucher to Warranty, &c.

Counterplea of the Voucher.

(20.) And the ſaid *E.* and *L.* by their ſaid Attorney, ſay, that the Counterplea of the ſaid *W.* to the Voucher to Warranty of the ſaid *E.* and *L.* is in Law inſufficient to preclude them the ſaid *E.* and *L.* from having their Voucher aforeſaid, and that they are under no Neceſſity, nor are bound by the Law of the Land to anſwer to the ſaid Counterplea, pleaded in the Manner and Form aforeſaid, and for Cauſes of Demurrer in Law, according to the Form of the Statute in ſuch Caſe made and provided, they the ſaid *E.* and *L.* ſhew theſe Cauſes following, (to wit) firſt, for that the ſaid Counterplea is not pleaded, as affiled, nor is of Record in one and the ſame Great Seſſions with the ſaid Voucher, nor in the ſecond Great Seſſions next enſuing, after the filing of the ſaid Voucher of Record in the Court of the Great Seſſions aforeſaid; but is filed in the third Great Seſſions after the filing of the Voucher aforeſaid: Secondly, for that the ſaid *W.* doth not ſhew in the ſaid Counterplea to this Court, what Sort or Kind of Writ is intended in the ſaid Counterplea, nor doth he ſhew the Nature, or the Parties, or the Form of the ſaid Writ, by which it may appear to this Court, what Sort or kind of Writ the ſaid *William* doth intend

Demurrer to the Counterplea.

With Cauſes of Demurrer.

in the ſaid Counteplea, in which the ſaid *J. S.* ought to be named: Thirdly, for that the ſaid Counterplea is not verify'd by the ſaid *W.* with any Verification whatſoever, whereas in Fact it ought to be verify'd, by referring to the Record of the ſaid Writ, or with ſome other Verification: Fourthly, for that there is no Neceſſity for the ſaid *J. S.* vouched to Warranty by the ſaid *E.* and *L.* to be named in the ſaid Writ, becauſe that upon ſuch Voucher to Warranty in the Writ aforeſaid, he ſhall Warrant *gratis*, according to the Voucher aforeſaid, without naming him in the ſaid Writ by the Appearance of the ſaid *J. S.* in his proper Perſon in this Court, ready to warrant according to the Voucher aforeſaid, without having any ſummons againſt the ſaid *J. S.* to Warranty; and this they are ready to verify: Whereupon by the Defect [or *for want*] of a ſufficient Anſwer to their Voucher aforeſaid, the ſaid Counterplea is in Law frivolous and altogether invalid to preclude the ſaid Voucher, pleaded in the Manner and Form aforeſaid, for which and other Reaſons being in the Counterplea and Record aforeſaid, the ſaid *E.* and *L.* pray Judgment, and that the ſaid Voucher may ſtand, *&c.*

Joinder in Demurrer.

(21.) And the ſaid *W.* by his ſaid Attorney, ſaith, that the ſaid Counterplea pleaded by the ſaid *W.* in the Manner aforeſaid, and the Matters therein contain'd, are in Law good and ſufficient to preclude the ſaid *E.* and *L.* from ſuch their ſaid Voucher to warranty; and becauſe the ſaid *E.* and *L.* do not anſwer to the ſaid Counterplea, nor in any wiſe deny it, the ſaid *W.* as before, prays Judgment, whether the ſaid *E.* and *L.* ought to be admitted to ſuch Voucher to Warranty of the ſaid *J. S.* *&c.* And becauſe the ſaid Juſtices are willing to adviſe themſelves, *&c.* [*ſo the Record goes on with the Continuances*]. At which ſaid *Monday* in the ſaid next Great Seſſions of our Lord the King, of the County aforeſaid, held at *Delo-*

gelly

gelly in the ſaid County before the ſaid *T. L.* Serjeant at Law, Juſtice, *&c.* and *T. J.* Eſq; another of the Juſtices, *&c.* on *Monday*, to wit, the 17th Day of *Auguſt* in the Year of the Reign of his ſaid preſent Majeſty, came as well the ſaid *W.* as the ſaid *E.* and *L.* by their ſaid Attornies; whereupon all and ſingular the Premiſſes being ſeen and here fully underſtood by the ſaid Juſtices, and upon mature Deliberation had thereon; inaſmuch as it appears to the ſaid Juſtices, that the ſaid Voucher by the ſaid *E.* and *L.* of the ſaid *J. S.* to Warranty in the Plea aforeſaid doth not lie, nor by the Law of the Land ought to be admitted; **Therefore it is here conſidered** [or *adjudged*] by the Court, that the ſaid *W.* recover his Seiſin againſt the ſaid *E.* and *L.* of the Tenements aforeſaid, with the Appurtenances, and that the ſaid *E.* and *L.* be amerced, *&c.* And thereupon the ſaid *W.* prays a Writ of our Sovereign Lord the King, to be directed to the Sheriff of the County aforeſaid, as well to cauſe him to have full Seiſin of the Tenements aforeſaid, with the Appurtenances, as to inquire of the Damages, *&c.* and it is granted to him returnable on *Monday* in the next Great Seſſions of our Lord the King, to be held in the County aforeſaid, *&c.*

Judgment of the Demurrer.

Conviction.

Conviction.

An Entry of Conviction by 2 Juſtices for keeping and ſhooting with a Gun, and of Commitment thereupon. 1 Saund. 262.

(1.) BE it remember'd, that this preſent [*ſuch a Day and Year*] one *J. D.* of, *&c.* Butcher, came before us *T. B.* and *G. B.* Eſq; * *two Juſtices aſſigned to keep the Peace of our Sovereign Lord the King* in the *County aforeſaid*, and he there ſaid and depoſed upon his Oath, that *W. S.* late of, *&c.* Yeoman, upon [*ſuch a Day and Year*] at *W.* aforeſaid had and kept a Hand-Gun, and then and there, the ſame being charged with Hail-ſhot, did unlawfully and unjuſtly ſhoot, contrary to the Form of the Statute in that Caſe made and provided, the ſaid *W. S.* not then having in his own Right, or in Right of his Wife, to the Uſe of him the ſaid *W. S.* nor any other Perſon or Perſons having to the Uſe of him the ſaid *W. S.* Lands, Tenements, Annuity or an Office *in Fee* of the yearly Value of 100 *l.* And becauſe the ſaid *W. S.* is attached and brought before us the ſaid Juſtices by the ſaid *J. D.* for the ſaid Offence, and being charged with the ſaid Offence in the Manner aforeſaid, cannot deny the ſame; it is therefore conſidered by us the ſaid Juſtices (* *one of us, to wit, the ſaid* T. B. *being the next Juſtice of the Peace aforeſaid to the ſaid Place, where the ſaid Offence* was *committed*,) that the ſaid *W. S.* do forfeit and pay the Sum of 10 *l.* according to the Form of the ſaid Statute, one Half of the ſaid Sum of 10 *l.* to be paid to our ſaid Sovereign Lord the King, the other Half thereof to be paid to the ſaid *J. D.* for that he firſt brought the ſaid *W. S.* before us for the ſaid Offence, according to the Form of the ſaid Statute.——And

Commitment.

that the ſaid *W. S.* be committed to the next County-Gaol for the County aforeſaid, there to remain until he ſhall pay the ſaid 10 *l.* according to the Form of the Statute, *&c.*

Note; *The Conviction in* Saunders *was held not to be good for Want of the Words at the two Aſteriſks above printed in Italick.*

Copar-

Coparceners.

(1.) AND the ſaid *E.* being ſo ſeiſed of ſuch his Eſtate therein, after whoſe Deceaſe the Advowſon of the Church aforeſaid deſcended to one *Anne*, the Wife of Sir *R. W.* Knt. *Elizabeth* the Wife of Sir *P. Coke*, Knt. and *Mary* the Wife of *Gerrard Dauner*, Eſq; as Daughters and Coheirs of the ſaid *E.* whereby the ſaid *R. W.* and *Anne* his Wife, *P. C.* and *Elizabeth* his Wife, and *G. D.* and *Mary* his Wife, were ſeiſed of the ſaid Advowſon of the Church aforeſaid, as of Fee and Right, in Right of the ſaid *Anne*, *Elizabeth* and *Mary*, and they the ſaid *R. W.* and *Anne*, *P.* and *Elizabeth*, *G.* and *Mary*, being ſo ſeiſed thereof, they the ſaid *R.* and *A.* afterwards died ſeiſed of ſuch their Eſtate therein, after which Deceaſe of the ſaid *Anne*, Wife of the ſaid *R.* the whole Purparty of the ſaid *Anne* of and in the Advowſon of the Church aforeſaid deſcended to one Sir *E. W.* Knt. as Son and Heir of the ſaid *Anne*, whereby the ſaid *E.* was ſeiſed of the ſaid Advowſon of the Church aforeſaid, as of a Fee and Right in Coparcenary with the ſaid *B.* and *E. G.* and *M.* and they the ſaid *Edward*, *Philip* and *Elizabeth Gerrard* being ſo ſeiſed thereof, they the ſaid *Philip* and *Elizabeth* died ſeiſed of ſuch their Eſtate therein, after the Deceaſe of which ſaid *Elizabeth* her whole Purparty of and in the ſaid Advowſon of the Church aforeſaid, deſcended to one Sir *Anthony Cook*, Knt. as Son and Heir to the ſaid *Elizabeth*, whereby the ſaid *Anthony* was ſeiſed of the ſaid Advowſon of the Church aforeſaid, as of Fee and Right, in Coparcenary with the ſaid *E. W. G.* and *M.* and they the ſaid *E. W. Anthony G.* and *M.* being ſo ſeiſed thereof, *&c.*

The Manner of pleading the Eſtate of **Coparceners** in an Advowſon.
1 Brown 295.

Covenant.

Covenant.

The Plaintiff having ſhew'd for Breach, that H. having a legal Title enter'd and ejected him; the Defendant by Proteſtation, that he kept his Covenant, and that H. had no Title, Pleads **Non Ejecit**, &c. 3 Inſt. Cl. 446.

(1.) ——— OUGHT not to have or maintain his ſaid Action againſt him, becauſe **Proteſting**, that he the ſaid *P.* hath, from the Time of levying of the ſaid Fine hitherto, truly and faithfully kept his ſaid Covenant of Warranty, and **Proteſting alſo**, that the ſaid *H.* at the Time of the Entry of him the ſaid *H.* into the Tenements aforeſaid, had not any Right or Title to the ſame Tenements, with the Appurtenances; **For Plea** the ſaid *P.* ſaith, that the ſaid *H.* did not eject, expel or remove the ſaid *J.* from the Poſſeſſion and Occupation of the Tenements aforeſaid, as the ſaid *J.* hath above declared thereof againſt him; and this he is ready to verify, *&c.*

Replication, Ejecit, &c. and Iſſue thereon.

(2.) And the ſaid *J.* **Replies**, that by any Thing by the ſaid *P.* before alledged, he ought not to be precluded from having and maintaining his ſaid Action againſt him, becauſe he ſaith, that the ſaid *H.* did eject, expel and remove him the ſaid *J.* from the Poſſeſſion of the ſaid Tenements, as he hath above thereof declared; and this he prays may be inquired of by the Country; and the ſaid *P.* doth the like: Therefore, *&c.*

Iſſue.

To an Action brought by a Citizen of London againſt his Apprentice. The Defendant **pleads Performance** of the Covenant, 3 Inſtr. Cl. 433.

(3.) ——— When, *&c.* And as to the Breach of Covenant above alledged, charging the ſaid *G.* that he after the Feaſt of St. *Paul*, next after the Date of the ſaid Indenture, and before the End and Expiration of the ſaid Term of ſeven Years, departed from the Service of him the ſaid *S.* the ſaid *G.* pleads, that he the ſaid *S.* ought not to have or maintain his Action thereof, againſt him, and **Traverſes** the ſeveral Breaches in the Covenant.

him, becauſe he ſaith, that the ſaid *S.* after the ſaid Feaſt of St. *Paul*, next after the Date of the ſaid Indenture, and before the End and Expiration of the ſaid Term of ſeven Years, to wit, on the ſaid 10th Day of *May* in the ſaid 6th Year of the Reign of his ſaid Majeſty, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, turned him the ſaid *G.* out of his ſaid Service, by reaſon whereof he the ſaid *G.* then and there departed from the Service of him the ſaid *S.* with his Leave and Conſent; **Without that**, that he the ſaid *G.* departed from the Service of him the ſaid *S.* without his Leave, as the ſaid *S.* by his ſaid Declaration doth above alledge as to that Particular; and this he is ready to verify, *&c.* And as to the Breach of Covenant above alledged, charging the ſaid *G.* with having unlawfully waſted many Goods and many Sums of Money to the Value of of the proper Goods and Monies of him the ſaid *S.* he the ſaid *G.* ſaith, that the ſaid *S.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that he, between the ſaid Feaſt of St. *Paul* and the ſaid 10th Day of *May*, by the Order of him the ſaid *S.* faithfully and lawfully diſpoſed of and applied to the proper Uſe of him the ſaid *S.* all the Goods and Sums of Money of him the ſaid *S.* received by him the ſaid *G.* within the ſaid Time or at any Time before; **Without that**, that the ſaid *G.* irregularly waſted any of the Goods, Chattels or Monies of him the ſaid *S.* without his Leave and Conſent, contrary to the Form and Effect of the ſaid Indenture, as he the ſaid *S.* hath above alledged; and this he is ready to verify, *&c.* And as to the Breach of the ſaid Covenant above ſuppoſed, charging the ſaid *G.* with having known Damage to have been done by the ſaid *W.* to the ſaid *S.* in waſting the Goods and Chattels of him the ſaid *S.* and not preventing thereof, though in his Power, nor preſently informing the ſaid *S.* thereof, the ſaid *G.* ſaith, that the ſaid *S.* ought not to have or maintain his ſaid Action thereof againſt him,

Traverſe.

Traverſe.

him,

him, becauſe he ſaith, that he did not know that the ſaid Damage was done to the ſaid *S.* by the ſaid *M.* as the ſaid *S.* hath by his Declaration above alledged; and of this he puts himſelf upon the Country; and the ſaid *S.* doth the like. Iſſue.

And as to the ſaid Breach of Covenant above ſuppoſed to have been committed, charging the ſaid *G.* to have committed Fornication with her the ſaid *M. M.* he the ſaid *G.* ſaith, that the ſaid *S.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that he the ſaid *G.* did not commit Fornication with her the ſaid *M. M.* as the ſaid *S.* hath in his ſaid Declaration above alledged; and of this he puts himſelf upon his Country; and the ſaid *S.* doth likewiſe the ſame. Iſſue.

And as to the ſaid Breach of Covenant above alledged to have been committed, charging the ſaid *G.* with having play'd at the unlawful Games aforeſaid with diverſe wicked Perſons, the ſaid *G.* ſaith, that the ſaid *S.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that he did not play at the ſaid unlawful Games, contrary to the Form and Effect of the ſaid Indenture aforeſaid, as the ſaid *S.* hath by his ſaid Declaration above alledg'd; and thereof he puts himſelf upon the Country; and the ſaid *S.* doth likewiſe the ſame. Iſſue.

And as to the ſaid Breach of Covenant above ſuppoſed to have been committed, charging the ſaid *G.* with frequenting Taverns, the ſaid *G.* ſaith, that the ſaid *S.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that he, at ſeveral Times between the ſaid Feaſt of St. *Paul* and the ſaid 10th Day of *May* in the ſaid 6th Year aboveſaid, did by Order of the ſaid *S.* go to divers Taverns in the Pariſh and Ward aforeſaid, and fetch and deliver Wine from the ſame Taverns to him the ſaid *S.* Traverſe. **Without that**, that he the ſaid *G.* frequented Taverns without the Leave of the ſaid *S.* contrary to the Form and Effect of the ſaid Indenture; and this he is ready to verify, *&c.*

(4.) And the ſaid *S.* as to the ſaid Plea of the ſaid *G.* as to the ſaid Breach of Covenant, for that the ſaid *G.* after the ſaid Feaſt of St. *Paul*, next after the Date of the ſaid Indenture, and before the End and Expiration of the ſaid Term of ſeven Years, departed from the Service of the ſaid *S.* above pleaded, in Bar thereof ſaith, that by any Thing before alledged by the ſaid *G.* he ought not to be precluded from having his ſaid Action thereof againſt him, becauſe he, as before, thereto ſaith, that the ſaid *G.* departed from the Service of him the ſaid *S.* without his Leave, as he the ſaid *S.* hath above in declaring alledged; and this he prays may be inquired of by the Country; and the ſaid *G.* doth the like: And as to the ſaid Plea of the ſaid *G.* as to the ſaid Breach of Covenant, for that the ſaid *G.* had waſted the Goods of the ſaid *S.* above pleaded, in Bar thereof he the ſaid *S.* ſaith, that by any Thing by the ſaid *G.* before in pleading alledged, he ought not to be barred from having his Action thereof againſt him, becauſe he, as before, thereof ſaith, that the ſaid *J.* did irregularly waſte very many of the Goods and Monies of him the ſaid *S.* without the Leave and Conſent of him the ſaid *S.* contrary to the Form and Effect of the ſaid Indenture, as he the ſaid *S.* hath above in declaring thereof alledged: And this he prays may be inquired of by the Country; and the ſaid *G.* doth the like: And as to the ſaid Plea of him the ſaid *G.* as to the Breach of the ſaid Covenant, for that the ſaid *G.* hath frequented Taverns above pleaded in Bar thereof, he the ſaid *S.* ſaith, that by any Thing by the ſaid *G.* before in the ſame Plea alledged, he ought not to be barred from having his ſaid Action thereof againſt him, becauſe he, as before, ſaith, that the ſaid *G.* hath frequented the Taverns aforeſaid, without the Leave of him the ſaid *S.* contrary to the Form and Effect of the ſaid Indenture, as he the ſaid *S.* hath above in declaring alledged; and this he prays may be inquired of by the Country; and the

Replication, in Maintenance of the Declaration.

Iſſue.

Iſſue.

Iſſue.

the ſaid *G.* doth the like: Therefore as well to try thoſe Iſſues as the other Iſſues above joined, the Sheriff is commanded, *&c.*

To an Action of Covenant brought againſt the Leſſor, for Expelling the Leſſee; the Leſſor pleads a **Surrender.**

3 Inſtr. Cl. 536.
Mo. Intr. 207.
1 Saund. 235.

(5.) ——— Ought not to have his Action againſt him, becauſe he ſaith, that the ſaid *C.* upon the ſaid Feaſt of St. *Michael* in the 5th Year aboveſaid, at *L.* aforeſaid, ſurrendered the ſaid Manor, with the Appurtenances, to him the ſaid *A.* by reaſon whereof he the ſaid *A.* did expel and turn the ſaid *C.* out of the Poſſeſſion of the ſaid Manor, as 'twas lawful for him to do; and this he is ready to verify, *&c.*

Replication, denies the **Surrender.**

(6.) And the ſaid *C.* replies, that by any Thing by the ſaid *A.* above in pleading alledged, he ought not to be barred from having his ſaid Action againſt the ſaid *A.* becauſe he ſaith, that he did not ſurrender the ſaid Manor, with the Appurtenances, to him the ſaid *A.* in the Manner as the ſaid *A.* hath above alledged; and this he prays may be inquired of by the Country, and the ſaid *C.* doth the like: Therefore, *&c.*

Iſſue thereupon.

A Plea, that Defendant did provide Hay, Corn, &c. for Horſes, according to his Covenant.

3 Inſtr. Cl. 430.

Iſſue.

(7.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he pleads, that he, during the ſaid ten Weeks did find and provide for the ſaid ſix Geldings good and ſufficient Hay, Oats, Straw and Litter, according to the Form and Effect of the ſaid Indenture, to wit, at aforeſaid; and thereof he puts himſelf upon the Country; and the ſaid *T.* doth likewiſe the ſame; therefore, *&c.*

Defendant pleads Performance of all Covenants in General.

Inſtr. Cl. 429.

(8.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he the ſaid *N.* ſaith, that he, at all Times after the Sealing and Delivery of the ſaid Indenture, to the Time of the Exhibiting of the ſaid Bill of him the ſaid *D.* hath fulfilled, performed and kept all and ſingular the Covenants, Grants, Payments, Articles, and Agreements on the Part of him the ſaid *N.*

to be fulfilled, performed and kept, according to the Form and Effect of the ſaid Indenture; and this he is ready to verify, &c.

I apprehend this Plea is not good, if pleaded without Oyer *of the Indenture.*

(9.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe proteſting, that there now is not, nor Time out of Mind hath been any ſuch Cuſtom uſed and approved of within the ſaid City of *London*, as the ſaid *C.* hath above by his Declaration alledged; and proteſting alſo, that he the ſaid *D.* hath not departed from the Service of the ſaid *C.* as he the ſaid *C.* hath above alledged, for Plea ſaith, that he hath been always ready; and that at ſeveral Times, and in particular on the 10th Day of *May* [*in ſuch a Year*] he offered to the ſaid *C.* his ſaid Maſter to ſerve him as his Apprentice for and during the Term of Years ſpecified in the ſaid Indenture, according to the Form and Effect of the ſaid Indenture, to wit, at *London* aforeſaid in the Pariſh and Ward aforeſaid, and that the ſaid *C.* abſolutely refuſed to receive him the ſaid *D.* into his Service: **Without that**, that he the ſaid *D.* refuſed to ſerve the ſaid *C.* his Maſter for the Reſidue of the ſaid Term of ſeven Years, according to the Tenor and Effect of the ſaid Indenture, as the ſaid *C.* hath above in Declaring alledged; and this he is ready to verify, &c.

An Action being brought againſt the Defendant, upon Indentures and the Cuſtom of London, for leaving his Maſter's Service, Defendant **Proteſting**, that there is no ſuch Cuſtom; and that he did not leave his Maſter's Service, **pleads**, that he offered to ſerve him, and his Maſter refuſ'd to receive him. 3 Inſtr. Cl. 432.

(10.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *W.* after the Execution of the ſaid Indenture, to wit, on the 27th Day of *September*, in the 6th Year of his preſent Majeſty's Reign, at *London* aforeſaid, in the Pariſh and Ward aforeſaid by his Releaſe, dated the ſame Day and Year, which he the ſaid *C.* ſealed with the Seal of the ſaid *W.* brings into Court, releaſed to the ſaid *C.* all Actions whatſoever, and which ſaid Releaſe is in the following Words: Know

A **Releaſe** pleaded to an Action of Covenant, and the Releaſe ſet forth in hæc Verba. 3 Inſtr. Cl. 431.

all Men, &c. [*and ſo go on to the End of the Releaſe*] ; and this he is ready to verify, &c.

A Plea of Non eſt factum in Covenant. 3 Inſtr. Cl. 431.

(11.) ——— When, &c. And pleads, that he ought not to be charged in the ſaid Action of Covenant by Virtue of the ſaid Indenture aforeſaid, becauſe he ſaith, that the ſaid Indenture is not his Deed ; and of this he puts himſelf upon the Country, and the ſaid *C.* doth likewiſe the ſame : Therefore, &c.

Upon a Letter of Attorney, impowering the Plaintff to receive Money due to the Defendant to his own Uſe, and a Breach aſſigned, that the Defendant received the Money himſelf; Defendant pleads, that he did not receive the Money.

3 Inſtr. Cl. 430. Iſſue.

(12.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he did not receive the ſaid 10 *l.* of the ſaid *M.* upon the ſaid 5th Day of *October*, which the ſaid *M.* ought to have paid him upon that Day, according to the Form and Effect of the ſaid Condition, as the ſaid *T.* hath by his ſaid Declaration above alledged ; and thereof he puts himſelf upon the Country ; and the ſaid *T.* doth likewiſe the ſame : Therefore, &c.

A Plea, that Defendant did not break his Covenant in the Manner and Form, &c. 3 Inſtr. Cl. 429.

(13.) ——— And the ſaid *H.* by *A. B.* his Attorney, comes and defends the Force and Injury, when, &c. and ſaith, that he hath not broken his ſaid Covenant in the Manner and Form as the ſaid *J.* hath above declared againſt him ; and of this he puts himſelf upon the Country ; and the ſaid *A.* doth likewiſe the ſame : Therefore, &c.

To an Action for not repairing according to Covenant, Defendant pleads, that he aſſigned the Meſſuage, and it was afterwards burnt and rebuilt and in good Repair.

3 Inſtr. Cl. 439. 2 Saund. 421.

(14.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that after the Demiſe of the ſaid Meſſuage, with the Appurtenants, to him the ſaid *J.* by the ſaid *T. W.* the Father, made in the Manner aforeſaid, and before the ſaid Meſſuage was demoliſhed or ruinous, to wit, on the 27th Day of *March*, in the ſaid 16th Year

Year of the Reign of his preſent Majeſty at *L.* aforeſaid in the Pariſh and Ward aforeſaid, he the ſaid *J.* granted and aſſigned to one *G. J.* Gent. his Executors, Adminiſtrators and Aſſigns the ſaid Meſſuage, with the Appurtenances, and all his Right, Title and Term of Years then to come and unexpired of and in the ſaid Premiſſes, by Virtue of which ſaid Grant and Aſſignment, the ſaid *G. J.* enter'd into the ſaid Meſſuage, with the Appurtenances, and was poſſeſſed thereof, and being ſo poſſeſſed thereof, the ſaid *J.* further ſaith, that the ſaid Meſſuage, with the Appurtenances, afterwards by the great Fire, which burnt down great Part of the City of *London*, was burnt, deſtroy'd and totally demoliſhed; and that in a convenient Time after the Deſtruction of the ſaid Meſſuage, and before the Exhibiting the Bill of him the ſaid *T. W.* to wit, the ſaid firſt of *April*, in the Year of the Reign of his ſaid preſent Majeſty the ſaid Meſſuage, with the Appurtenances, were by him the ſaid *G. J.* well and ſufficiently rebuilt, repaired, ſupported and maintained in and with all needful and neceſſary Reparations and Amendments whatſoever, and now are in good and ſufficient Repair, according to the Form and Effect of the ſaid Indenture; and this he is ready to verify, *&c.*

(15.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *P.* after the ſaid 7th Day of *April*, in the Indenture aforeſaid ſpecified, and before the ſaid Feaſt of St. *Peter*, in the ſame Indenture likewiſe ſpecified, to wit, the 27th Day of *April* next before the ſaid Feaſt of St. *Peter*, at *W.* aforeſaid, gave Notice to him the ſaid *N.* to deliver to him the ſaid *P.* the ſaid thirty Quarters of Wheat at the ſaid Manſion-houſe of him the ſaid *P.* in the ſaid Town of *W.* according to the Form and Effect of the ſaid Indenture; and the ſaid *N.* ſaith, that he afterwards, to wit, the 24th Day of *June* next afrer

To an Action of Covenant for not delivering Corn at the Day the Defendant pleads a **Tender and Refuſal.** 3 Inſtr. Cl. 438.

the ſaid 27th Day of *April*, and before the ſaid Feaſt of St. *Peter*, offer'd to deliver to the ſaid *P.* the ſaid thirty Quarters of Wheat at *W.* aforeſaid, to wit, at the Manſion-houſe of the ſaid *P.* according to the Form and Effect of the ſaid Indenture; and the ſaid *P.* then and there refuſed to receive the ſaid thirty Quarters of Wheat of him the ſaid *N.* and the ſaid *N.* further ſaith, that he always from the ſaid 24th Day of *June* to this Time hath been ready, and now is ready to deliver the ſaid thirty Quarters of Wheat to him the ſaid *P.* according to the Form and Effect of the ſaid Indenture, if he the ſaid *P.* will receive the ſame; and this he is ready to verify, *&c.*

Replication denies the Tender.

(16.) And the ſaid *P.* replies, that he by any Thing before alledged by the ſaid *N.* ought not to be precluded from having and maintaining his ſaid Action, becauſe proteſting, that he doth not acknowledge any Thing before alledged by the ſaid *N.* to be true, for Plea ſaith, that he the ſaid *N.* did not offer to deliver to him the ſaid *P.* the ſaid thirty Quarters of Wheat, according to the Form and Effect of the ſaid Indenture, as the ſaid *N.* hath above alledged; and this he prays may be inquired of by the Country; and the ſaid *N.* doth likewiſe the ſame: Therefore, *&c.*

Iſſue thereon.

To an Action for not permitting the Leſſee to enjoy according to Covenant, the Defendant **pleads** a Demiſe of another Meſſuage, in Satisfaction of all Damages, &c.

3 Inſt. Cl. 437. Bro. Red. 149.

(17.) ——— Ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that before the Exhibiting the ſaid Bill of him the ſaid *M.* in this Cauſe, to wit, the 7th Day of *January* in the 5th Year of the Reign of his ſaid preſent Majeſty, at the City of *Lincoln* aforeſaid, he the ſaid *R.* by his Deed indented, demiſed to the ſaid *M.* one Meſſuage of him the ſaid *R.* lying and being at *D.* in the Pariſh of in the ſaid City of *Lincoln*; To have and to hold to the ſaid *M.* for and during the Term of ninety-nine Years, if he the ſaid *M.* ſhould happen ſo long to live) in full Satisfaction and Diſcharge of all Damages ſuſtain'd by

by him the ſaid *M.* and the Demands of him the ſaid *M.* by reaſon of the Breach and Non-performance of the ſaid Covenant; and the ſaid Entry of him the ſaid *R.* in and upon the Poſſeſſion of him the ſaid *M.* and Expulſion of the ſaid *E.* in that reſpect; and this he the ſaid *R.* is ready to verify, *&c.*

Replication, that Defendant did not demiſe the ſaid other Meſſuage in Satisfaction, &c.

(18.) And the ſaid *M.* replies, that by any Thing by the ſaid *R.* above in pleading alledged, he ought not to be precluded from having his ſaid Action againſt him, becauſe he ſaith, that the ſaid *R.* did not demiſe to him the ſaid *M.* the ſaid Meſſuage in the ſaid Plea mentioned, in full Satisfaction and Diſcharge of all Damages by him the ſaid *M.* ſuſtained, and the Demands of him the ſaid *M.* by reaſon of the Breach and Non-performance of the ſaid Covenant, and the ſaid Entry in and upon the Poſſeſſion of him the ſaid *M.* and Expulſion of him the ſaid *E.* in that Reſpect, in the Manner and Form as the ſaid *R.* hath above in pleading alledged; and this he prays may be inquired of by the Country, *&c.*

Iſſue tendered thereon.

Defendant pleads, that no Part of the Premiſſes were out of Repair, and takes Iſſue upon every Breach.
3 Inſtr. Cl. 443.
Vidian's Entr. 122.

(19.) ——— When, *&c.* And as to the breaking of the ſaid Covenant, for that the ſaid Meſſuage after the ſaid Grant made thereof to the ſaid *S. G.* Gent. in the Form aforeſaid during the Life of him the ſaid *S.* and after the Death of him the ſaid *S.* until the ſaid Day of ſuing forth of the ſaid Original of him the ſaid *H.* to wit on the 9th Day of *April* in the above-ſaid 6th Year of the Reign of his ſaid preſent Majeſty, was and now is uncovered for want of tiling thereof, for want of which Tiling the large Timbers of the ſaid Meſſuage, by Storms of Rain deſcending thereon, and the Force of the Wind blowing thereon, are become damaged and rotten, and the ſaid Meſſuage by reaſon of ſuch Damage and Rotteneſs likely to fall down, the ſaid *T.* ſaith, that the ſaid Meſſuage was not uncovered for Want of Tiling thereof, contrary to the Form and Effect of the Indenture aforeſaid, as the ſaid

H. by his Declaration above alledges, and thereof he puts himſelf upon the Country; and the ſaid *H.* doth likewiſe the ſame: And as to the ſaid Breach of Covenant, for that the Glaſs-Windows of the whole Meſſuage aforeſaid, containing ſixty-ſix Foot during the whole Time aforeſaid, were broken, unglazed, and in great Decay for want of Glazing and Leading of them, and for that ſix Caſements of the ſame Widows were taken and driven out of the ſaid Windows, the ſaid *T.* ſaith, that the ſaid Glaſs-Windows were not broken, unglazed, or in Decay for Want of Glazing and Leading of the ſame, nor were the ſaid ſix Caſements of the ſame Windows taken and driven out of the ſaid Windows, contrary to the Form and Effect of the ſaid Indenture, as the ſaid *H.* by his Declaration above alledges; and of this he puts himſelf upon the Country; and the ſaid *H.* doth likewiſe the ſame: And as to the ſaid Breach of Covenants, for that the ſaid four Leaden Gutters of the ſaid Meſſuage, with the Spouts affixed to the ſame Meſſuage, were broken, ruinous, and in great Decay for Want of Repairing thereof, the ſaid *T.* ſaith, that the ſaid Leaden Gutters and Spouts were not broken, ruinous or in Decay, contrary to the Form and Effect of the ſaid Indenture, as the ſaid *H.* by his ſaid Declaration above alledges; and of this he puts himſelf upon the Country; and the ſaid *H.* doth the like; and as to the Breach of the ſaid Covenant, for that the Plaiſtring of the ſaid whole Meſſuage, as well in the Inſide as the Outſide thereof, during the Time aforeſaid, was broken, ruinous and in great Decay, for Want of Plaiſtering thereof, the ſaid *T.* ſaith, that the ſaid Plaiſtering of the ſaid Meſſuage in the Part aforeſaid, was not broken, ruinous or in Decay, contrary to the Form and Effect of the ſaid Indenture, as the ſaid *H.* by his ſaid Declaration above alledges; and of this he puts himſelf upon the Country; and the ſaid *H.* doth likewiſe the ſame: Therefore as well to try that Iſſue, as the ſaid other Iſſues above join'd between the ſaid Parties, the Sheriff is commanded, *&c.*

1 Iſſue.

2 Iſſue.

3 Iſſue.

4 Iſſue.

(20)

(20.) ——— When, &c. and ſaith, that he well and ſufficiently repaired, ſuſtained, and at his own Coſts and Charges made the ſaid Tenements defenſible againſt Wind and Rain, during the Year laſt paſt of the ſaid Term; and thereof he puts himſelf upon the Country; and the ſaid *W.* doth the like: Therefore, &c.

Defendant pleads, that he kept the Premiſſes in Repair againſt Wind and Rain.
3 Inſt. Cl. 445.

(21.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he well and ſufficiently tiled and covered all the Houſes and Buildings then ſtanding upon the ſaid demiſed Premiſſes, and well and ſufficiently maintained, repaired and kept the Hedges of the Gardens, Orchards and Backſides of the ſame Premiſſes; and alſo well and ſufficiently maintained, repaired and kept the Chancel of the Pariſh Church of *D.* aforeſaid from Time to Time, and at at all Times during the ſaid Term of ſeven Years granted by the Indenture aforeſaid, and all of them ſo well and ſufficiently tiled, covered, maintained, repaired and kept, left and ſurrendered at the End of the ſaid Term of ſeven Years, to the ſaid *J. H.* according to the Form and Effect of the ſaid Indenture; and thereof he puts himſelf upon the Country; and the ſaid *G.* doth the like: Therefore, &c.

Defendant pleads, that he kept the Premiſſes in Repair during the Term, and ſo ſurrendered them up at the End of the Term.
3 Inſt. Cl. 445.

(22.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that the Paſſage belonging to the ſaid Premiſſes demiſed to the ſaid *W.* is ſituate in the aforeſaid Pariſh of St. *James*, *Weſtminſter*, and leads from the ſaid Houſe demiſed to the ſaid *W.* as aforeſaid, into *Six-Bell Yard* aforeſaid, in the ſaid Pariſh of St. *James*, *Weſtminſter*, and that a Drain might have been and may be conveniently made in and through the Paſſage aforeſaid, to carry the Waſte Water from the ſaid Houſes into the main Sewer in *Six-Bell Yard* aforeſaid; and that ſhe the ſaid *H.* after the making of the ſaid Demiſe to the ſaid *W.* as aforeſaid, to wit, the 16th

A Plea, that Defendant permitted Plaintiff to make a Drain according to Covenant, but he refuſed it.
3 Inſtr. Cl. 447.
2 Ventr. 272, 278.

Day of *November*, in the aboveſaid 4th Year of the Reign of his preſent Majeſty at the Pariſh of St. *Margaret*, *Weſtminſter*, aforeſaid, permitted and gave Liberty to the ſaid *W.* to make a Drain at his own Coſts and Charges in and through the Paſſage aforeſaid, to carry the waſte Water from the ſaid Houſes into the main Sewer in *Six-Bell Yard* aforeſaid, by reaſon whereof the ſaid *W.* might at his Liberty have made a Drain through the ſaid Paſſage, if he had thought fit, but he abſolutely refuſed ſo to do; and this ſhe is ready to verify, *&c.*

Defendant pleads, that he performed the Covenants till a particular Day, and then was ejected by a Perſon having a prior Title. 3 Inſtr. Cl. 449. Bro. Red. 158.

(23.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that after the Sealing and Delivery of the ſaid Indenture in the Declaration above ſpecify'd, and until the Feaſt-Day of St. *Michael* the Archangel, in the 6th Year of the Reign of his preſent Majeſty, he the ſaid *C.* performed and paid all and ſingular the Covenants and Payments on the Part of him the ſaid *C.* to be performed and paid according to the Force and Effect of the ſaid Indenture; and this he is ready to verify, *&c.* And the ſaid *C.* further ſaith, that after the Sealing and Delivery of the ſaid Indenture, to wit, the 9th Day of *June* in the ſaid 6th Year of his preſent Majeſty, *John* Lord *Roſs*, Baron of *Hatton* (having a prior and better Title to the Premiſſes in the ſaid Indenture ſpecify'd and demiſed to the ſaid *C.*) at *N.* aforeſaid, demiſed, granted and to farm let the aforeſaid Premiſſes, with the Appurtenances, in the ſaid Indenture mentioned, amongſt other Things, to Sir *W. T.* Knt. to have and to hold the Tenements aforeſaid, with the Appurtenances, to the ſaid Sir *W. T.* and his Aſſigns, from the 29th Day of *May* then laſt paſt, unto the full End and Term of five Years, from thence next following, and fully to be compleat and ended, by Virtue of which ſaid Demiſe the ſaid *W.* afterwards, and before the ſaid Feaſt of St. *Michael* the Archangel, to wit, on the 1ſt Day of *November* in the ſaid 6th Year aboveſaid,

ſaid, at *N.* in the County aforeſaid, entered into the ſaid Premiſſes, with the Appurtenances, and ejected, expelled, and removed him the ſaid *C.* from his ſaid Poſſeſſion, and by Virtue of the Demiſe of the ſaid Lord *Roſs* hath kept and ſtill keeps him the ſaid *C.* out of the Poſſeſſion he had thereof; and this he is ready to verify, *&c.*

(24.) ——— Ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that true it is, that he the ſaid *A.* hath received the ſaid 800 *l.* by and out of the Rents and Profits of the Eſtate of him the ſaid Sir *B. W.* But the ſaid *A.* further ſaith, that before the Receipt of the ſaid 800 *l.* to wit, the 17th Day of *May* in the ſaid 7th Year of the Reign of our ſaid Lord the King at *L.* aforeſaid, in the Pariſh and Ward aforeſaid, he the ſaid *A.* expended and laid out, in and about the repairing of the ſaid Premiſſes in the ſaid Articles above mentioned, and other neceſſary Expences*, the Sum of 810 *l.* by reaſon whereof he the ſaid *A.* hath retained the ſaid 800 *l.* ſo as aforeſaid received, in his Hands towards Satisfaction of the ſaid 810 *l.* ſo as aforeſaid by him expended and laid out, and by reaſon thereof hath not render'd any Account to them the ſaid *R.* and *T.* and this he is ready to verify, *&c.*

In Covenant to make Account, Defendant pleads, that he laid out the Money received in neceſſary Repairs, and other neceſſary Charges. 3 Inſtr. Cl. 456.

* The Neceſſaries muſt be particularly ſet out. 1 Saund. 49.

(25.) And the ſaid *A.* by his Attorney, comes and defends the Force, and Injury, when, *&c.* and ſaith, that the ſaid *C.* did not requeſt him the ſaid *A.* to ſeal and as his Act and Deed deliver to him the ſaid *C.* the ſaid Writing of Releaſe for further Aſſurance, to be made of the ſaid Cloſe, with the Appurtenances, to the ſaid *C.* as the ſaid *C.* by his Declaration above alledges; and of this he puts himſelf upon the Country, *&c.*

Breach aſſigned for not executing further Aſſurance upon Requeſt. Defendant pleads, that Plaintiff did not requeſt him. 3 Inſt. Cl. 459.

(26.) When,

On a Charter-Party Breach aſſigned, that the Bills of Exchange were not paid according to Covenant. After Oyer of the Indenture, Defendant pleads, that he depoſited the Monies in the Hands of a third Perſon by the Order and for the Uſe of the Plaintiff. 3 Inſtr. Cl. 457.

(26.) ——— When, &c. And prays Oyer of the Indenture in the Declaration above ſpecify'd, and 'tis read to him in theſe Words, to wit, *This Writing indented, made*, [&c.] which ſaid Indenture being read and heard, the ſaid *T. W.* ſaith, that the ſaid *J. S.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that he the ſaid *T. W.* after the Execution of the ſaid Indenture, and after the Departure of him the ſaid *T.* from *England*, towards the Iſland of *Madera* in the ſaid Indenture above ſpecify'd, to wit, the 25th Day of *May* in the 6th Year of the Reign of our ſaid Sovereign Lord the King at *London* aforeſaid, in the Pariſh and Ward aforeſaid, by the Order and Direction of him the ſaid *J.* depoſited and left the Sum of 200 *l.* in the Hands of the ſaid *H. Y.* in the ſaid Indenture above named in full Payment of the Monies, which were due for Wine to be deliver'd by Virtue and Reaſon of the ſaid Indenture, according to the Form and Effect of the Covenant of him the ſaid *T. W.* in that Reſpect enter'd into, which ſaid 200 *l.* from the Time of the Depoſiting thereof, ſo as aforeſaid made, hitherto have remained, and yet do remain in the Hands of the ſaid *H. Y.* to the Uſe of the ſaid *J. S.* to wit, at *London* aforeſaid, in the Pariſh and Ward aforeſaid; with this, that the ſaid *T.* doth aver, that the Price of the ſaid Wines bargain'd and ſold by the ſaid *J.* to him the ſaid *T.* doth not exceed the ſaid Sum of 200 *l.* and this the ſaid *T. W.* is ready to verify, &c.

The Defendant pleads Payment of the Money, according to his Covenant. 3 Inſtr. Cl. 458.

(27.) ——— When, &c. and proteſting, that no ſuch Grant or Demiſe was ever made of the Tithes in the ſaid Declaration above ſpecify'd, as in the ſaid Articles is mentioned to have been made, for Plea the ſaid *S.* ſaith, that he at the Time of Sealing of the ſaid Articles paid to the ſaid *E.* the ſaid Sum of 30 *l.* according to the Form and Effect of the ſaid Articles, to wit, at *London* aforeſaid

foreſaid in the Pariſh and Ward aforeſaid; and this he is ready to verify, &c.

(28.) And the ſaid *E.* replies, that by any Thing by the ſaid *S.* above in pleading alledged, he ought not to be precluded from having his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *S.* did not pay to him the ſaid *E.* at the Time of Sealing the ſaid Articles, the ſaid Sum of 30 *l.* according to the Form and Effect of the ſaid Articles, in Manner and Form as the ſaid *S.* hath above in Pleading alledged; and this he prays may be inquired of by the Country; and the ſaid *S.* doth likewiſe the ſame: Therefore, &c. Iſſue.

(29.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that the ſaid Ship called the *Sarah* of *Southampton* was not ready at the Port of *Southampton* aforeſaid, upon the ſaid 10th Day of *October* in the Declaration above mentioned, to ſail from thence to the River called *James-River* in *Virginia*, nor departed from thence upon her intended Voyage directly to the ſaid River, nor proceeded in the ſame Voyage with ſuch Diſpatch as ſhe might have done, as Wind and Weather ſerv'd, according to the Form and Effect of the ſaid Charter-Party; and this he is ready to verify, &c.

Defendant to an Action on a Charter-Party pleads, that the Ship was not ready to ſail by the Time limited, nor did ſhe ſail or proceed as ſhe ought to have done.
3 Inſtr. Cl. 470.
Cl. Aſſ. 309.

(30.) When, &c. And Protesting, that the ſaid Ship was not ſtrong and firm during the ſaid Voyage, according to the Form and Effect of the ſaid Indenture, For Plea the ſaid *D.* ſaith, that the ſaid *Spaniards* did not attack the ſaid Ship in a hoſtile Manner, nor enter or board the ſaid Ship in ſo violent a Manner, that the ſaid Ship could not peaceably carry on her Commerce with the ſaid Iſland during the Time aforeſaid, according to the Form and Effect of the ſaid

To an Action upon a Charter-Party, Defendant Proteſting, that the Ship was not ſtrong and firm during the Voyage, pleads, that the Ship was not attacked or boarded by the Spaniards, &c.
3 Inſtr. Cl. 469.
1 Bro. 127.

ſaid Indenture, as the ſaid *R.* by his ſaid Declaration above ſuggeſts; and of this he puts himſelf upon the Country; and the ſaid *R.* doth likewiſe the ſame, *&c.*

To an Action brought againſt the Leſſor for expelling the Leſſee; Defendant pleads, that the Leſſee ſurrender'd.

(31.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that the ſaid *C.* upon the ſaid Feaſt of St. *Michael* in the ſaid 6th Year of his ſaid Majeſty's Reign, at *L.* aforeſaid, ſurrendered to the ſaid *A.* the ſaid Manor, with the Appurtenances, by reaſon whereof he the ſaid *A.* expelled and turned the ſaid *C.* out of the Poſſeſſion of the ſaid Manor, as it was lawful for him to do; and this he is ready to verify, *&c.*

Replication denies the Surrender, and Iſſue. 3 Inſtr. Cl. 436.

(32.) And the ſaid *C.* replies, that he by any Thing by the ſaid *A.* before alledged, ought not to be precluded from having his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *C.* did not ſurrender the ſaid Manor, with the Appurtenances, to the ſaid *A.* as he the ſaid *A.* hath above alledged; and this he prays may be inquired of by the Country; and the ſaid *A.* doth the like: Therefore, *&c.*

To an Action againſt Defendant for not finding Plaintiff his Apprentice neceſſary Meat, &c. Defendant pleads, that he did find him neceſſary Diet till Plaintiff left his Service. 3 Inſtr. Cl. 433.

(33.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe Protesting, that the ſaid *B.* hath not performed any Thing in the ſaid Indenture above ſpecify'd in the ſaid Declaration, on the Part of him the ſaid *B.* to be performed, For Plea the ſaid *H.* ſaith, that at the Time of the Execution of the ſaid Indenture, he uſed the Art of a Painter, and that he the ſaid *H.* from the ſaid 15th Day of *May* in the aboveſaid 6th Year of the Reign of his preſent Majeſty at *London* aforeſaid, in the Pariſh and Ward aforeſaid, until the 1ſt Day of *October* in the ſaid 6th Year of the Reign of his ſaid Majeſty (on which ſaid 1ſt Day of *October*, he the ſaid *B.* at *London* aforeſaid, in the Pariſh and Ward aforeſaid, departed from the Service of him the ſaid *H.* without his Leave) did find and provide for him

him the ſaid *B.* ſufficient Meat, Drink and Lodging, and other Neceſſaries fit for an Apprentice, according to the Form and Effect of the ſaid Indenture; and this he is ready to verify, *&c.*

(34.) ——— Ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that from the Time of the Return of the ſaid Ships from their ſaid Voyage to the Port of *London*, until the Day of exhibiting of the ſaid Bill, to wit, [*ſuch a Day and Year*] at *London* aforeſaid, in the Pariſh and Ward aforeſaid, he was ready, and ſtill is ready truly and juſtly to account with the ſaid *T.* touching the Expences of the ſaid Freight and Proviſions of the ſaid Ships, and all other Expences touching the ſaid Voyage, but the ſaid *T.* abſolutely refuſed and ſtill doth refuſe to account with him the ſaid *R.* concerning the Expences of the ſaid Freight and the Proviſions of the ſaid Ships, and all other Expences touching the ſaid Voyage; Without that, that the ſaid *T.* after the ſaid Return of the ſaid Ships from the ſaid Voyage, was ready to account with him the ſaid *R.* touching the ſaid Expences of the ſaid Freight and Proviſion of the ſaid Ships, and all other Expences touching the ſaid Voyage in the Manner and Form as the ſaid *T.* hath above complained againſt him; and this he is ready to verify, *&c.*

Breach of Covenant aſſigned, that the Defendant had not accounted as to the Freight, &c. of ſeveral Ships; Defendant pleads that he offered to account, and Plaintiff refuſed to account with him.
3 Inſtr. Cl. 470.
Vidian 138.

(35.) And the ſaid *W.W.* by his Attorney, comes and defends the Force and Injury, when, *&c.* and pleads, that the ſaid *T. B.* the Son, ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that true it is, that the ſaid *J. B.* before the Execution of the ſaid Indenture, was ſeiz'd of and in the aforeſaid Parcel of Land, called *Perry-field*, and of the ſaid ſmall Grove or Wood adjoining thereto in the ſaid Indenture above ſpecify'd, in his Demeſn as of Fee, and held the ſame of the ſaid *R.* Earl of *S.* as of his Manor of *Wimbiſh-Hall* in Free Socage, to wit, by Fealty only, and being ſo ſeiſed thereof,

To an Action of Covenant brought by the Heir of the Purchaſer againſt the Seller, he pleads, that he was ſeiſed in Fee, and had good Right to convey.
3 Inſt. Cl. 450.
See Co. Entr. 112, 113.

thereof, upon the 13th Day of *January* in the ſaid 4th Year of the Reign of his preſent Majeſty at *London*, in the Pariſh and Ward aforeſaid, made his Laſt Will and Teſtament in Writing, and thereby gave and deviſed the ſaid Parcel of Land called *P.* and the aforeſaid ſmall Grove or Wood adjoining thereto, to the ſaid *J. B.* the Son, for the Term of the natural Life of him the ſaid *J. B.* the Son; and that after the Death of the ſaid *J. B.* the Son, the ſaid Parcel of Land called *P.* and the ſaid ſmall Grove ſhould remain to *J. B.* Son of the ſaid *J. B.* and the Heirs Male of the ſaid *J. B.* Son of him the ſaid *J. B.* the Father, lawfully begotten, and that the ſaid *J. B.* the Grandfather, afterwards, and before the Execution of the Indenture aforeſaid, at *W.* aforeſaid, died ſeiſed of ſuch Eſtate thereof; and the ſaid *J. B.* the Father, after the Death of the ſaid *R. B.* the Grandfather enter'd into the ſaid Parcel of Land called *P.* and the ſaid ſmall Grove or Wood adjoining thereto, and was ſeiſed thereof in his Demeſne as of a Freehold, for the Term of his Life, by Virtue of the ſaid Deviſe, the Remainder thereof after his Deceaſe belonging to the ſaid *J. B.* the Grandſon, and the Heirs Male of his Body iſſuing; and being ſo ſeiſed thereof, he the ſaid *J. B.* the Father, upon the 1ſt Day of *Auguſt* in the aboveſaid 4th Year of his ſaid Majeſty, demiſed to the ſaid *H. H.* the ſaid Parcel of Land called *P.* and the ſaid ſmall Grove or Wood thereto adjoining, with the Appurtenances, to have and to hold to the ſaid *H.* and his Aſſigns, during the natural Life of him the ſaid *J. B.* the Father; and that the ſaid *H.* by Virtue of the ſaid Demiſe was ſeiſed of the ſaid Parcel of Land called *P.* and of the ſaid ſmall Grove or Wood aforeſaid thereto adjoining, with the Appurtenances, in his Demeſne as of a Freehold for the Term of the Life of the ſaid *J. B.* the Father, the Remainder thereof after his Death, ſo, as aforeſaid, belonging to the ſaid *J. B.* the Grandſon and the Heirs Male of his Body iſſuing; and being ſo ſeiſed thereof he the ſaid *H.* on the 10th Day

Confeſſes the Deviſe for Life, the Remainder in Tail.

Tenant for Life demiſes to another for the Life of the ſaid Tenant for Life.

of *Auguſt* in the aboveſaid 4th Year of the Reign of our ſaid preſent Lord the King, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, demiſed to the ſaid *R. W.* the ſaid Parcel of Land called *P.* and the aforeſaid little Grove or Wood thereto adjoining, with the Appurtenances, to have and to hold to the ſaid *R. W.* and his Aſſigns, from the ſaid 10th Day of *Auguſt*, for two whole Years then next following, and fully to be compleat and ended; and that the ſaid *R. W.* by Virtue of the ſaid Demiſe enter'd into the ſaid Piece or Parcel of Land, and the ſaid little Grove or Wood thereto adjoining, with the Appurtenances, and was thereof poſſeſſed, and being ſo poſſeſſed thereof, the ſaid *R. W.* on the 1ſt Day of *September* in the aboveſaid 4th Year of his ſaid Majeſty, enfeoffed him the ſaid *W. W.* of the ſaid Parcel of Land called *P.* and the ſaid little Grove or Wood aforeſaid thereto adjoining, with the Appurtenances, to have and to hold to the ſaid *W.* his Heirs and Aſſigns for ever; and that he the ſaid *W. W.* by Virtue of the ſaid Feoffment, was ſeiſed of the ſaid Parcel of Land called *P.* and the little Grove or Wood aforeſaid thereto adjoining, with the Appurtenances, in his Demeſne as of Fee, as the ſaid *J. B.* the Son, by his ſaid Declaration above alledges; but the ſaid *W. W.* being ſo ſeiſed thereof, the ſaid *J. B.* the Father, by the Name of *J. B.* of *Wimbiſh* in the County of *Eſſex*, Yeoman, Son and Heir of *J. B.* late of *W.* Yeoman, deceaſed, before the Execution of the ſaid Indenture brought here into Court, to wit, the 13th Day of *October* in the aboveſaid 4th Year of the Reign of his ſaid Majeſty, by his Releaſe in Writing, which the ſaid *W. W.* ſealed with the Seal of the ſaid *J. B.* the Father, brings here into Court, which is dated the ſame Day and Year, remiſed, releaſed and abſolutely quit-claimed for himſelf and his Heirs, to him the ſaid *W. W.* being then in the full and peaceable Poſſeſſion thereof, all his Right, Title, Eſtate, Claim, Uſe, Intereſt and Demand whatſoever, which he the ſaid *J.* then had, or in any Manner could have of and in the

The Demiſe for two Years to one of the Covenantors.

And the Feoffment of Leſſee for Years to Defendant, the other Covenantor.

But Defendant farther ſaith, that the firſt Deviſee for Life was Heir, and releaſed to him with Warranty.

the ſaid Parcel of Land called *P.* and the ſaid ſmall Grove or Wood thereto adjoining, and of and in every Part thereof, ſo that neither the ſaid *J. B.* the Father, nor his Heirs, nor any other Perſon or Perſons in the Names or Rights of them or either of them, thereafter could or ſhould claim or challenge any Right, Eſtate, Title, Claim, Uſe, Reverſion or Demand whatſoever of and in the Premiſſes, or of and in any Part thereof, but ſhould be for ever totally precluded of every Action, Eſtate, Right, Title, Claim, Uſe and Demand to be demanded or claimed thereon; and that the ſaid *J. B.* and his Heirs, the ſaid Parcel of Land called *P.* and the ſaid ſmall Grove or Wood aforeſaid thereto adjoining, with the Appurtenances, to the ſaid *W. W.* his Heirs and Aſſigns, to the only proper Uſe and Behoof of him the ſaid *W. W.* his Heirs and Aſſigns for ever, againſt all Men would warrant, and for ever defend by the ſaid Writing of Releaſe, as by the ſaid Releaſe, amongſt other Things, more fully appears; and the ſaid *W. W.* further ſaith, that he being ſeiſed in his Demeſne as of Fee, in the Manner aforeſaid, of the ſaid Parcel of Land called *P.* and the ſaid little Grove or Wood thereto adjoining, with the ſaid Appurtenances, the ſaid Indenture here brought into Court, was made the ſaid 8th Day of *July* in the above 5th Year of the Reign of his ſaid Majeſty, between the ſaid *W. W.* and *R. W.* of the one Part, and the ſaid *J. B.* the Father, of the other Part; and afterwards the ſaid *W. W.* being ſo ſeiſed of the ſaid Parcel of Land called *P.* and the ſaid ſmall Grove or Wood thereto adjoining, with the Appurtenances, on the 2d Day of *Auguſt* in the ſaid 5th Year of the Reign of his ſaid Majeſty, enfeoffed the ſaid *T. B.* the Father, of the ſaid Parcel of Land called *P.* and the ſaid ſmall Grove or Wood thereto adjoining, with the Appurtenances, to have and to hold to the ſaid *T. B.* his Heirs and Aſſigns for ever, by Virtue of which Feoffment, the ſaid *T. B.* the Father, was ſeiſed of the ſaid Parcel of Land called *P.* and the

The Defendant ſeiſed at the Time of making the ſaid Indenture.

Feoffment to Plaintiff's Father.

the ſaid ſmall Grove or Wood thereto adjoining, with the Appurtenances, in his Demeſne as of Fee, and being ſo ſeiſed, the ſaid *T. B.* the Father, died ſeiſed of ſuch Eſtate therein; after whoſe Death the aforeſaid Parcel of Land called *P.* and the ſmall Grove or Wood thereto adjoining, with the Appurtenances, deſcended to the ſaid *T. B.* the now Plaintiff, as Son and Heir to the ſaid *T. B.* the Father, by reaſon whereof the ſaid *T. B.* the now Plaintiff entered into the ſaid Parcel of Land called *P.* and the ſmall Grove or Wood aforeſaid thereto adjoining, with the Appurtenances, and yet is ſeiſed thereof in his Demeſne as of Fee; and the ſaid *T. B.* being ſo ſeiſed thereof, the ſaid *J. B.* the Father died, after whoſe Death the ſaid Warranty deſcended upon the ſaid *J. B.* the Son, as upon the Son and Heir of the ſaid *J. B.* the Father; and ſo the ſaid *W. W.* ſaith, that he, at the ſaid Time of the Sealing and Delivering of the ſaid Indenture brought here into Court, was and ſtood ſeiſed of and in the ſaid Parcel of Land, and the aforeſaid ſmall Grove or Wood thereto adjoining, with the Appurtenances, of a good, ſure, perfect, abſolute, and indefeaſible Eſtate in Fee Simple, without any Condition; and that he the ſaid *W.* then had full and lawful Power and Authority of giving, granting, bargaining, ſelling, aſſuring and alienating of the ſaid Parcel of Land, and ſmall Grove or Wood aforeſaid thereto adjoining, with the Appurtenances, and every Part and Parcel of the Premiſſes by the Indenture aforeſaid bargained and ſold to the ſaid *T. B.* the Father, his Heirs and Aſſigns in the Manner and Form as was before recited and expreſſed in the ſaid Indenture, according to the Form and Effect of that Indenture; and this he is ready to verify, *&c.*

Deſcent to the Plaintiff.

That the Warranty deſcended upon Tenant in Tail, and that Defendant had a perfect Eſtate in Fee Simple, and had a good Power to ſell.

Breach for Non-Payment of Rent; the Defendant confeſſes Part, and to other Part pleads, that he aſſigned over before any other Rent was due.
Inſtr. Cl. 454. 2 Ventr. 228, 234.

(36.) ——— When, &c. And as to the ſaid Breach of Covenant in Non-payment of the ſaid twelve Gallons of *Spaniſh* Wine, Part of the twenty-four Gallons above mentioned in the ſaid Declaration for one Year, ending the 10th Day of *May*, in the Year of our Lord and 20 *l.* Parcel of the ſaid 60 *l.* which became in Arrear and unpaid for Half a Year, ending at the Feaſt of the bleſſed Virgin *Mary*, in the aboveſaid 7th Year of the Reign of our now Sovereign Lord the King, he the ſaid *T.* ſaith, that he cannot deny the ſaid Action of the ſaid *H.* therefore, nor but that he hath broke his Covenant in that Reſpect, as to the twelve Gallons of *Spaniſh* Wine, and the ſaid 20 *l.* in the Manner as the ſaid *H.* hath by his ſaid Declaration above alledged; and as to the ſaid Breach of Covenant in Non-payment of the ſaid twelve Gallons of *Spaniſh* Wine, Reſidue of the ſaid twenty-four Gallons of *Spaniſh* Wine, and alſo in Non-payment of the ſaid 40 *l.* Reſidue of the ſaid 60 *l.* in the Declaration aforeſaid ſpecify'd, the ſaid *T.* ſaith, that the ſaid *H.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that before the ſaid twelve Gallons of *Spaniſh* Wine laſt mentioned, or any Part thereof, or the ſaid 40 *l.* for the Rent of the ſaid Tenements, with the Appurtenances, or any Part thereof became due in Arrear or unpaid, to wit, on the 14th Day of *June* in the ſaid 7th Year of the Reign of his ſaid Majeſty, at the Pariſh aforeſaid in the County aforeſaid, he the ſaid *T.* granted and aſſigned to one *T. M.* of *London*, Gent. the Eſtate, Title, Intereſt and Term of Years, which he the ſaid *T.* then had to come of and in the ſaid Tenements, with the Appurtenances, of which ſaid Aſſignment of the ſaid Tenements, with the Appurtenances, he the ſaid *T.* on the ſame Day, and at the ſame Place, gave Notice to him the ſaid *H.* and by Virtue of which ſaid Aſſignment the ſaid *J. M.* afterwards, to wit, the ſame Day and Year, enter'd into the Tenements aforeſaid, with the

the Appurtenances, and was and yet is poſſeſſed thereof, for the Reſidue of the ſaid Term in the ſaid Declaration above ſpecify'd; and this he is ready to verify, &c.

B. R.

(37.) And the ſaid *A.* by *T. W.* his Attorney, comes and defends the Force and Injury, when, &c. and ſaith, that the ſaid *W.* and *T.* ought not to have or maintain their ſaid Action againſt him, and pleads, that after the making the ſaid Demiſe to him the ſaid Earl as aforeſaid, and before the Grant of the Reverſion to them the ſaid *W.* and *T.* to wit, the 28th Day of *October* in the 8th Year of the Reign of our ſaid Sovereign Lord the King, he the ſaid *A.* at *London* aforeſaid in the Pariſh and Ward aforeſaid, ſurrender'd to the ſaid Earl, his the ſaid *A.*'s Term of Years then to come and unexpired of and in the ſaid Tenements, with the Appurtenances, to him demiſed, as aforeſaid, and all his Eſtate, Right, Title and Intereſt therein; which ſaid Surrender the ſaid Earl then and there accepted; and this he is ready to verify: And therefore prays Judgment, whether the ſaid *W. T.* ought to have or maintain their ſaid Action againſt him, &c.

That the Leſſee ſurrender'd his Term. Mo. Intr.

(38.) And the ſaid *W.* and *T.* reply, that notwithſtanding any Thing alledged by the ſaid *A.* in his Plea, they ought not to be precluded from having their ſaid Action againſt him, for that the ſaid *A.* did not ſurrender the ſaid Term of Years of and in the ſaid Tenements, with the Appurtenances, or his Eſtate, Right, Title or Intereſt therein to the ſaid Earl, in the Manner and Form as the ſaid *A.* hath above in his Plea alledged; and this they pray may be inquired of by the Country; and the ſaid *A.* doth the like, &c.

Replication, that Leſſee did not ſurrender, and Iſſue thereupon.

To an Action of Covenant to make a further Aſſurance upon Requeſt. Bro. Red. 163.

(39.) And the ſaid *C.* by *E. F.* his Attorney, comes and defends the Force and Injury, when, &c. and pleads, that the ſaid *A.* did not requeſt him the ſaid *C.* to ſeal and deliver as his Deed to the ſaid *A.* the ſaid Releaſe for making a further Aſſurance of the Cloſe aforeſaid, with the Appurtenances, as the ſaid *A.* doth above ſuppoſe by his ſaid Declaration; and thereof he puts himſelf upon the Country. *Trin.* 18 *Eliz. Roll.* 1544.

A Plea by an Executor of the ſame Name with the Teſtator, to an Action of Covenant for Want of Repairs, that the Barn was demoliſhed at the Plaintiff's Requeſt, who had the Materials, &c. and that the Defendant kept the other Premiſſes in good Repair.

(40.) ——— Becauſe he ſaith, that a Barn, Part of the ſaid demiſed Premiſſes, after the ſaid Demiſe made as aforeſaid, and after the Death of the ſaid *G.* now deceaſed, and before the End of the Term aforeſaid (to wit) [*ſuch a Day and Year*] at *D.* aforeſaid, at the Requeſt, and by the Appointment of the ſaid *J.* was pulled down and the Materials thereof he the ſaid *J.* then and there converted and diſpoſed of to his own Uſe, and the ſaid *G.* the now Defendant, further pleads, that the ſaid *G.* now deceaſed, from Time to Time and at all Times after the making of the ſaid Indenture, and he the ſaid *G.* the now Defendant, during the ſaid Term demiſed by the ſaid Indenture, kept and upheld all the ſaid Meſſuages, Barns, and Buildings by the ſaid Indenture demiſed, together with all the Hedges, Fences and Walls thereto belonging (except the ſaid Barn pulled down, as aforeſaid) in good and ſufficient Repair, according to the Form and Effect of the ſaid Indenture; and the ſaid *G.* further pleads, that he the ſaid *G.* at the End of the ſaid Term, left the ſaid Meſſuages, Barns and Buildings well and ſufficiently repaired to the ſaid *J.* together with all the Doors, Locks, Keys and Fences in and upon the ſaid Premiſſes, and in as good and ſufficient Repair as the ſame were in at the Time of the Demiſe aforeſaid (except as aforeſaid) according to the Form and Effect of the ſaid Indenture; and this he is ready to verify: Wherefore he prays Judgment, whether the

the ſaid *J.* ought to have or maintain his ſaid Action againſt him *&c.*

(41.) ——— When, *&c.* And as to the Breach of Covenant aforeſaid, for that the ſaid Meſſuage after the Grant aforeſaid thereof made, in the Manner aforeſaid, to the ſaid Sir *G. B.* Knt. during the Life of the ſaid *G.* and after the Deceaſe of the ſaid *G.* till the Day of ſuing out the original Writ of the ſaid *A.* that is to ſay, on the 11th Day of *April* in the 9th Year aforeſaid, was and now is uncovered for Want of Tiling thereof, whereby the Timber of the ſaid Meſſuage by Storms of Wind and Rain falling thereon, for Want of Tiling aforeſaid, became decay'd and rotten, and the ſaid Meſſuage, by reaſon of ſuch Decay and Rotteneſs fell to Ruin, but the ſaid *F.* ſaith, that the ſaid Meſſuage was not uncovered for Want of Tiling aforeſaid, contrary to the Form and Effect of the ſaid Indenture; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame; And as to the Breach of Covenant aforeſaid as to the Glaſs Windows of the ſaid Meſſuage, containing ſeventy-four Feet, during all the Time aforeſaid, being broken, unglazed and in great Decay for Want of Glazing and Leading thereof, and the ſaid four Iron Caſements of the ſaid Windows being taken out of the ſaid Windows and broken, the ſaid *F.* pleads, that the ſaid Glaſs Windows were not broken, and unglazed, and in great Decay for Want of Glazing and Leading thereof, nor were the ſaid Iron Caſements of the ſaid Windows taken and broken, contrary to the Form and Effect of the ſaid Indenture, as the ſaid *A.* doth above ſuppoſe by his ſaid Declaration, and thereof the ſaid *F.* puts himſelf upon the Country, and the ſaid *A.* does likewiſe the ſame (*and ſo on as to the reſt of the Iſſues.*)

A Plea to an Action of Covenant, that the Houſe became decay'd by Time and the Violence of Weather, and an Iſſue taken upon every Breach.

Bro. Red. 157, 158.

Creation of Honours.

An Entry where the Plaintiff was made a Lord, after the Exhibiting of the Plaintiff's Bill, and before Iſſue joined. Lutt. 1273.

(1.) AND now at this Day, to wit, on *Thurſday* next after eight Days of St. *Hillary* in this Term, and until which Day the ſaid Sir *Robert Fagg* had leave to imparl to the aforeſaid Bill, and then to plead, &c. before which Day, to wit, on the 10th Day of *January* in the 5th Year of our ſaid Sovereign Lady the Queen, her ſaid Majeſty, by her Letters Patent ſealed with her great Seal of *England*, bearing Date at *Weſtminſter*, the ſaid 10th Day of *January*, in the 5th Year of her Reign aboveſaid, and brought into this Court, made, conſtituted, and created the ſaid *Thomas Pelham*, then a Baronet, to the State, Degree, Stile, Title, Dignity, Name and Honour of a Baron within this Kingdom, by the Name of *Thomas* Lord *Pelham*, Baron of *Laughton* in the County of *Suſſex*, before our ſaid Sovereign Lady the Queen at *Weſtminſter*, came then as well the ſaid *Thomas* Lord *Pelham*, by his ſaid Attorney, as the ſaid Sir *Robert Fagg*, by *John Tilden* his Attorney, and the ſaid Sir *Robert Fagg* defends the Force and Injury, &c. and ſaith, that he is not guilty of the Premiſſes aforeſaid above charged on him; and thereof he puts himſelf upon the Country; and the ſaid *Thomas* Lord *Pelham* does likewiſe the ſame, &c.

An Entry where the Plaintiff was made a Duke before the Return of the Venire.

(2.) And now here at this Day (to wit) on *Wedneſday* next after fifteen Days of *Eaſter*, this ſame Term, until which Day the aforeſaid *W. H.* had Leave to imparl to the aforeſaid Bill, and then to anſwer, &c. before the Lord the King at *Weſtminſter*, came as well the ſaid *James* Earl of *Becknock*, by his Attorney aforeſaid, as the aforeſaid *W.* by *Jeoffrey Woodward* his Attorney, and the ſaid *W.* defends the Force and Injury, when, &c. and ſaith, he is not guilty thereof; and of this he puts himſelf upon the Country; and

and the aforeſaid *James* Earl of *Brecknock* doth likewiſe the ſame, &c. Therefore let a Jury come before our Sovereign Lord the King at *Weſtminſter* on *Friday* next after the Morrow of the *Holy Trinity*, and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame Day is given to the ſaid Parties to be there, &c. Before which Day, to wit, after the aforeſaid *Monday* next after three Weeks of St. *Michael*, and before *Tueſday* next after eight Days of St. *Hillary*, (to wit) on the 9th Day of *November* in the 34th Year of the Reign of the Lord the King, our ſaid Sovereign Lord the King by his Letters Patent under his great Seal of *England*, bearing Date at *Weſtminſter* the aforeſaid 9th Day of *November* in the aforeſaid 34th Year of his Reign, and brought here into Court, made, conſtituted, created and preferred the aforeſaid *James* Earl of *Brecknock*, to the State, Degree, Stile and Title, Dignity, Name and Honour of a Duke within this Kingdom of *England*, by the Name of Duke of *Ormond*; at which *Tueſday* next after the Octaves of St. *Hillary*, before our ſaid Sovereign Lord the King at *Weſtminſter*, came as well the aforeſaid *James* Duke of *Ormond*, who as well, &c. as the ſaid *W. H.* by their Attornies, and the Sheriff hath not returned the Writ thereof; therefore, as before, let a Jury thereof come before our ſaid Sovereign Lord the King at *Weſtminſter*, on *Monday* next after eight Days of St. *Hillary*, and who neither, &c. to recognize, &c. becauſe as well, &c. the ſame Day is given as well to the ſaid *James* Duke of *Ormond*, who as well, &c. as to the aforeſaid *W. H.* to be there, &c.

Death and Dying Seiſed.

An Entry where one of the Defendants died after an Imparlance, and the other pleaded.

(1.) AT which Day came as well the ſaid *A. B.* as the ſaid *C. D.* by their Attornies aforeſaid; and thereupon the ſaid *A. B.* doth alledge, that after the laſt Continuance of the Plea aforeſaid, (that is to ſay) after the Morrow of the *Holy Trinity* laſt paſt, from which Day the Plaint aforeſaid was further continued here until this Day, that is to ſay, on the ſaid Octaves of St. *Martin* then next enſuing, and before the ſaid Octaves of St. *Martin*, that is to ſay, upon the 10th Day of laſt paſt, the ſaid *C.* died at *M.* in the County aforeſaid; and becauſe the ſaid *A.* doth not deny it, let no Proceſs be had, or any Thing further be done againſt the ſaid *C.* And thereupon the ſaid *A.* as to the Coming with Force and Arms, or whatſoever, *&c.* [*ſo go on with the Plea of the other Defendant*].

The Manner of pleading the Death of one Coparcener without Iſſue, and a Deſcent from her of the Lands of the other.

1 Saund. 255.

(2.) ——— And being ſo ſeiſed, he the ſaid *Arthur* afterwards (to wit) on the 1ſt Day of *May* in the 42d Year of the Reign of our late Sovereign Lady Queen *Elizabeth* died at *S.* aforeſaid ſo ſeiſed of ſuch his Eſtate, as aforeſaid, after whoſe Deceaſe, the Tenements aforeſaid, with the Appurtenances above ſpecified, deſcended to *Mary* and *Winefrid Crafford*, as Daughters and Coheirs to the ſaid *A. C.* of his Body lawfully begotten, whereby the ſaid *Mary* and *Winefrid* entered into the Tenements aforeſaid, with the Appurtenances above ſpecified in the ſaid Declaration, and were ſeiſed thereof in their Demeſne as of a Fee Tail (to wit) to them and the Heirs of the Body of the ſaid *Guy Crafford* and

and *Joan* his Wife, lawfully iſſuing, and being ſo ſeiſed thereof, the ſaid *Mary* afterwards, to wit, on the 10th Day of *November* in the 44th Year of the Reign of her ſaid late Majeſty Queen *Elizabeth*, at *S.* aforeſaid, died ſo ſeiſed of ſuch her Eſtate therein without Iſſue of her Body lawfully begotten, after whoſe Death the Moiety of the ſaid *Mary* deſcended to the ſaid *Wineſrid* as Siſter and Heir to the ſaid *Mary*, whereby the ſaid *Wineſrid* was ſeiſed of the entire Tenements aforeſaid, with the Appurtenances, in her Demeſne as of a Fee Tail, to wit, to her and the Heirs of the Body of the ſaid *G.* and *J.* lawfully iſſuing, and being ſo ſeiſed, *&c.*

(3.) ——— And being ſo poſſeſſed thereof, they the ſaid *W. W. J. W.* and *Elizabeth* his Wife, afterwards, to wit, on the 6th Day of *September*, in the 15th Year of the Reign of his preſent Majeſty at *Weſtminſter* aforeſaid, died, after whoſe Deceaſe he the ſaid *J. W.* the Younger, entered into the Tenements aforeſaid, with the Appurtenances, and was thereof poſſeſſed; and being ſo poſſeſſed thereof, the ſaid *J. H.* [*the Leſſee*] afterwards, to wit, on the 7th Day of *September*, in the ſaid 15th Year of the Reign of his ſaid preſent Majeſty, at *Weſtminſter* aforeſaid, died, and the ſaid *Penelope* ſurvived, and the ſaid *J. W.* the Younger, in Fact ſaith, that one *Hugh Stowel*, Eſq; after the Commencement of the Term aforeſaid, and during the Term, and before the Day of Exhibiting this Bill (to wit) on the 29th Day of *September* in the 18th Year of the Reign of his ſaid preſent Majeſty, having a lawful Right and Title to the Tenements aforeſaid, with the Appurtenances, enter'd therein in and upon the Poſſeſſion of the ſaid *J. W.* the Younger, and ejected, drove out and removed the ſaid *John Wotton* the Younger, againſt his Will by due Proceſs of Law, and kept and witheld, and doth now withold the ſaid *John Wotton* the Younger, from his Poſſeſſion thereof, he being ſo driven out, as aforeſaid,

The Form of ſhewing the Death of three, and an Entry of the Leſſee after their Deceaſe.

And an Eviction by a prior Title.

2 Saund. 175, 176.

aforeſaid, againſt the Form and Effect of the Fine and Warranty aforeſaid, &c.

An Entry where the King died after the Awarding, and before the Return of the Venire. Lut. 882.

(4.) ——— And who neither, &c. to recognize, &c. becauſe as well, &c. The ſame Day is given to the ſaid Parties to be there, &c. Before which Day our ſaid late Sovereign Lord King *Charles* the Second departed this Life; and at which Day the ſaid Parties, by their Attornies aforeſaid, came before our Sovereign Lord *James* the Second, now King of *England*, &c. at *Weſtminſter*; but this Court of our ſaid Sovereign Lord are not now here yet adviſed to give their Judgment of and concerning the Premiſſes, whereof the ſaid Parties have ſubmitted themſelves to the Judgment of the Court; a Day therefore is given to the Parties aforeſaid, till *Wedneſday* next after fifteen Days of *Eaſter*, to be before our ſaid Sovereign Lord the King at *Weſtminſter*, to hear their Judgment therein, for that the Court of our ſaid Sovereign Lord the King are not yet therein, &c. And as well to try the Iſſue above joined between the ſaid Parties to be tried by the Country, as to inquire what Damages the ſaid *E. C.* hath ſuſtained by reaſon of the Premiſſes, whereof the ſaid Parties have ſubmitted themſelves to the Judgment of the Court, if Judgment ſhall happen to be given for the ſaid *E. C.* let a Jury thereof come before our ſaid Sovereign Lord the King at *Weſtminſter*, on *Wedneſday* next after fifteen Days of *Eaſter*, and who neither, &c. to recognize, &c. becauſe, as well, &c. the ſame Day is given to the ſaid Parties to be there, &c.

The Death of the Plaintiff after the laſt Continuance.

(5.) And now here at this Day comes the ſaid *F. T.* and *E.* by their ſaid Attorney, and the ſaid *W. W.* comes not, and the ſaid Juſtices before whom, &c. returned here the Record had before them in theſe Words: Afterwards, &c. [*and ſo go on with the* Poſtea] And thereupon the ſaid *F. T.* and *E.* ſay, that the ſaid *W. W.* after the laſt Continuance of the Action aforeſaid, (to wit) on next after the Morrow of the *Holy Trinity* laſt paſt; on

on which Day the ſaid Action was further continued here to this Day, that is to ſay, on *Monday* next after three Weeks of St. *Michael* then next following, before which Day, that is to ſay, on the laſt Day of *Auguſt* laſt) died at *T.* aforeſaid: Therefore it is conſidered, that the ſaid Plaintiff and his Pledges to proſecute be amerced, *&c.*

Dying Seiſed.

(6.) ——— And afterwards (to wit) on the 27th Day of *March* in the Year of our Lord 1525. his late Majeſty King *James* the Firſt, at *B.* aforeſaid, died ſeiſed, as aforeſaid, of ſuch Eſtate, after whoſe Deceaſe the ſaid Rectory to which, *&c.* deſcended to our late Sovereign Lord *Charles* the Firſt late King of *England*, as Son and Heir to his ſaid late Majeſty King *James* the Firſt, by which his ſaid late Majeſty King *Charles* the Firſt was ſeiſed of the ſaid Rectory, to which *&c.* in his Demeſne as of Fee, in Right of his Crown of *England*, and afterwards, *&c.* [*ſo go on, as the Caſe is*].

The Manner of ſetting forth the Dying Seiſed of the King, and the Seiſin of his Succeſſor. 1 Lut. 902, 903.

(7.) By which our ſaid Sovereign Lord the King, that now is, and our ſaid late Sovereign Lady Queen *Mary*, were ſeiſed of the ſaid Rectory, to which, *&c.* in their Demeſne as of Fee, in Right of their Crown of *England*, and afterwards, to wit, on the 28th Day of *December* in the Year of our Lord 1694. our ſaid late Sovereign Lady Queen *Mary* at *B.* aforeſaid departed this Life, whereby our ſaid Sovereign Lord the King that now is was and is ſole ſeiſed of the Rectory aforeſaid, to which in his Demeſne as of Fee, in Right of his Crown of *England*, *&c.*

The Manner of Pleading a Seiſin by King William and Q. Mary, and the Seiſin of K. William after her Death. Lut. 903.

(8.) That

The Manner of pleading a Dying Seiſed without Iſſue before any Rent in Arrear.

(8.) ——— That before the Feaſt of St. *Michael* the Archangel [*in ſuch a Year*] being the firſt Feaſt or Day of Payment of any of the Rent aforeſaid, and before the ſaid Feaſt none of the Rent aforeſaid is ſuppoſed to be due (to wit) upon [*ſuch a Day and Year*] ſhe the ſaid *Elizabeth* died without Iſſue of her Body lawfully begotten (to wit) at *L.* aforeſaid, *&c.*

The Dying Seiſed without any Heir, other than one M. found by the Jury. 1 Saund. 177.

(9.) And the ſaid Jurors do upon their Oath aforeſaid further declare, that the ſaid Sir *R. K.* Knt. being ſo ſeiſed, as aforeſaid, of and in the Tenements aforeſaid, with the Appurtenances, mentioned in the ſaid Declaration; and likewiſe of the Reverſion aforeſaid, afterwards, and before the ſaid Time when, *&c.* to wit, on the 3d Day of *September*, in the 5th Year of the Reign of his ſaid preſent Majeſty at *T.* aforeſaid, died ſo ſeiſed thereof, without any Heir of his Body, other than the ſaid *Mary*, *&c.*

The Manner of ſetting forth a Seiſin of a Reverſion, a Deviſe thereof to the Daughter of the Grantor, the Death of the Teſtator and Entry and Seiſin of the Deviſee, her Marriage, the Seiſin of her Husband and her after the Marriage, the Death of the Husband, and her Sole Seiſin after his Death.

(10.) ——— And the ſaid *G.* being ſo ſeiſed of the Reverſion of the Tenements aforeſaid, with the Appurtenances, and the ſaid *J. L.* being ſo poſſeſſed of the Intereſt of the Term aforeſaid, he the ſaid *G.* afterwards, to wit, [*ſuch a Day and Year*] at *S.* aforeſaid, made his Laſt Will and Teſtament in Writing, and thereby deviſed and bequeathed the Tenements aforeſaid, with the Appurtenances, to the ſaid *M.* by the Name of [*as in the Will*] her Heirs and Aſſigns for ever, and afterwards the ſaid *G.* died ſeiſed of ſuch Eſtate therein, after whoſe Deceaſe the ſaid *M.* claimed the Reverſion of the Tenements aforeſaid, with the Appurtenances, and was ſeiſed thereof in her Demeſn as of Fee, by Virtue of the Deviſe and Bequeſt aforeſaid; and ſhe the ſaid *M.* being ſo ſeiſed of the Reverſion aforeſaid, and the ſaid *J.* ſo being poſſeſſed of the Intereſt of the Term aforeſaid, ſhe the ſaid *M.* afterwards (to wit) [*ſuch a Day and Year*] at *S.* aforeſaid, took to Husband *C. T.* Gentleman, by Virtue where-

whereof they the ſaid *C.* and *M.* were ſeiſed of the Reverſon aforeſaid in their Demeſne as of Fee, in Right of the ſaid *M.* and they the ſaid *C.* and *M.* being ſo ſeiſed of the Reverſion aforeſaid, and the ſaid *J.* being ſo poſſeſſed of his Term, he the ſaid *C.* afterwards died at *S.* aforeſaid, after whoſe Death the ſaid *Margaret* was ſole ſeiſed of the Reverſion aforeſaid in her Demeſne as of Fee, *&c.*

Debt.

General Pleas in Debt upon Bonds.

(1.) AND the ſaid *B.* by *D. E.* his Attorney, comes and defends the Force and Injury, when, *&c.* and pleads, that he ought not to be charged with the Debt aforeſaid, by Virtue of the ſaid Writing Obligatory [or *by Virtue of the ſaid Bond*] becauſe he ſaith, that the ſaid Writing Obligatory [or *that the ſaid Bond*] is not his Deed; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame, *&c.* Non eſt Factum.

(2.) When, *&c.* and pleads, that the ſaid Bond is not his Deed [*and then as above, omitting*, that he ought not to be charged, *&c.*] Otherwiſe pleaded thus:

(3.) ——— When, *&c.* and pleads, that the ſaid Bond [or *if the Declaration is on ſeveral Bonds*] that the ſaid Bonds is not the Deed [or *are not the Deeds*, as the Caſe is] of the ſaid *E.* the Teſtator; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame, *&c.* By an Executor.

(4.) When,

Non eſt Factum pleaded ſpecially.

(4.) ——— When, &c. and pleads, that he ought not to be charged with the Debt aforeſaid, by Virtue of the Bond aforeſaid, becauſe he ſaith, that on the Day and Year above ſpecified in the ſaid Declaration, he the ſaid *B.* was and now is a Layman, and unletter'd [or rather *not able to read Writing*] and that at the Time of the making the ſaid Bond, he the ſaid *B.* borrowed of the ſaid *A.* 5 *l.* to be paid to the ſaid *A.* at the Feaſt of the Annunciation of the Bleſſed Virgin *Mary* then next enſuing, and that the ſaid Bond then read to him was expounded to him as a Bond in the penal Sum of 10 *l.* with a Condition for the Payment of the ſaid 5 *l.* at the Feaſt aforeſaid; whereupon he the ſaid *B.* believing, that the ſaid Writing thus read and expounded had been a Writing Obligatory, therein containing, that the ſaid *B.* was bound to the ſaid *A.* in the ſaid penal Sum of 10 *l.* with a Condition for the Payment of the ſaid 5 *l.* at the Feaſt aforeſaid, he the ſaid *B.* did then and there ſeal and deliver the ſaid Writing Obligatory to the ſaid *A.* and thus the ſaid *B.* pleads, that the ſaid Writing Obligatory now brought into this Court, reciting the Condition aforeſaid, is not his Deed; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame, &c.

A Special Non eſt Factum for a Raſure.

(5.) And the ſaid *B.* by *C. D.* his Attorney, comes and defends the Force and Injury, when, &c. and craves Oyer of the ſaid Writing Obligatory [or *of the ſaid Bond*] and it is read to him in theſe Words: [*ſetting forth the Bond*] Which being read and heard, he the ſaid *B.* pleads, that he ought not to be charged with the Debt aforeſaid, by reaſon of the ſaid Bond, becauſe he ſaith, that at the Time of the making thereof, the Sum therein inſerted to be paid to the ſaid *A.* was the Sum of 40 *l.* and that he the ſaid *B.* then and there ſealed and executed the ſaid Bond, with the ſaid Sum of 40 *l.* therein ſo inſerted, and that the ſaid *A.* after the Writing, Sealing and

Delivery of the ſaid Bond wrote and inſerted, or cauſed to be written and inſerted the Sum of 50 *l.* inſtead of the ſaid Sum of 40 *l.* to be paid to the ſaid *A.* and thus the ſaid *B.* pleads, that the ſaid Bond is not his Deed; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame, *&c.*

(6.) And the ſaid *B.* by *J. C.* his Attorney, comes and defends the Force and Injury, when, *&c.* and pleads, that the ſaid *A.* ought not to have his ſaid Action againſt him, becauſe he ſaith, that on the Day and Year aforeſaid he cauſed and procured the Bond to be written for the Sum of 20 *l.* and that he ſealed and executed the ſaid Bond, as his Deed to the ſaid *A.* therein containing only the ſaid Sum of 20 *l.* and the ſaid *B.* doth further plead, that after the Making, Sealing and Delivery of the ſaid Bond, he the ſaid *A.* at *L.* aforeſaid, raſed and put out of the ſaid Bond the ſaid Sum of 20 *l.* and inſtead thereof wrote and inſerted the Sum of 30 *l.* whereby the ſaid Bond became void in Law; and this he is ready to verify; wherefore he prays Judgment, whether the ſaid *A.* ought to have his ſaid Action thereupon againſt him, *&c.*

The like for a Raſure. Bro. Red. 177.

(7.) And the ſaid *A.* replies, that he ought not to be barred [or *precluded*] from having the ſaid Action, by reaſon of any Thing above alledged, becauſe he ſaith, that before the Sealing and Delivery of the ſaid Bond, the ſaid Sum of 20 *l.* was raſed and put out of the ſaid Bond, and inſtead thereof the ſaid Sum of 30 *l.* was written and inſerted therein, as well by the Conſent of the ſaid *B.* as of him the ſaid *A.* and that after the ſaid Sum of 30 *l.* was ſo written and inſerted in the ſaid Bond, as aforeſaid, he the ſaid *B.* the ſame Day, Year and Place aforeſaid, ſealed and delivered the ſaid Bond to the ſaid *A.* as his Deed, Without that, that the ſaid *A.* after the Making, Sealing and Delivery of the ſaid Boud raſed or put

A Replication, that the ſaid Raſure was made before the Sealing and Delivery of the ſaid Bond.

put out thereof the ſaid Sum of 20 *l.* as the ſaid *B.* hath above alledged; and this he is ready to verify: Whereupon he prays Judgment and his Debt aforeſaid, together with his Damages occaſioned by detaining the ſaid Debt, to be adjudged to him, *&c.*

A Rejoinder with an Iſſue upon the Traverſe.

(8.) And the ſaid *B.* (as before) ſaith, that the ſaid *A.* after the Sealing and Delivery of the ſaid Bond, raſed and put out thereof the ſaid Sum of 20 *l.* as he hath above alledged; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame, *&c.*

That the Defendant agreed to make the ſaid Bond with a Condition.

(9.) *After Oyer of the Bond and Condition*; which being read and heard, he the ſaid *B.* pleads, that he ought not to be charged with the Debt aforeſaid, by Virtue of the Bond aforeſaid, becauſe he ſaith, that he at the Time of the Making of the ſaid Bond was a Layman and illiterate, and that the ſaid Bond was at that Time read to him and expounded to be a Bond, containing therein the Condition following, (to wit) that if he the ſaid *B.* ſhould indemnify the ſaid *A.* and all the Inhabitants of the Pariſh of St. *Mary* in *Cambridge* aforeſaid, where the ſaid *B.* then dwelt, from all Charges, which may happen by reaſon of an Infant born of the Body of *S. M.* Couſin to the ſaid *B.* that then the ſaid Obligation ſhould be void and of no Effect: Whereupon he the ſaid *B.* truſting to ſuch the ſaid Reading and Expounding of the ſaid Obligation, as aforeſaid, and believing, that the ſaid Writing contained in itſelf the Condition aforeſaid, above by him recited; whereas in Truth, it did not contain ſuch Condition, he the ſaid *B.* then and there ſealed, and as his Deed delivered the Obligation aforeſaid; and therefore the ſaid *B.* pleads, that the ſaid Writing brought into Court, containing the Condition aforeſaid above read to the ſaid *B.* and not the ſaid Condition by him above recited, is not his Deed, and thereof he puts himſelf upon the Country, and the ſaid *A.* does likewiſe the

ſame. ——— *Judgment for the Plaintiff.* Hill. 5 *Ja. Rol.* 1855.

(10.) And the ſaid *B.* comes, &c. [*as in the former*] and pleads, that he ought not to be charged with the Debt aforeſaid, by reaſon of the ſaid Writing obligatory [or *Obligation*] becauſe he ſaith, that on the Day and Year above ſpecified in the ſaid Declaration at *K.* aforeſaid, he cauſed the ſaid Writing to be written and ſealed, and delivered the ſame to one *W. W.* Clerk, as an Eſcrow, to be kept ſafe and ſecurely, upon Condition, That if afterwards *D. B.* Gentleman, named in the ſaid Obligation, ſhould find Security to indemnify him the ſaid *B.* againſt the ſaid *A.* [*the Plaintiff*] for the ſaid 40 *l.* That then the ſaid Obligation ſhould be delivered to the ſaid *A.* as the Deed of him the ſaid *B.* and not otherwiſe; and the ſaid *B.* doth in Fact aver, that the ſaid *D.* would not find any Security to indemnify the ſaid *B.* againſt the ſaid *A.* for the ſaid 40 *l.* and yet the ſaid *W.* delivered the ſaid Obligation to the ſaid *A.* Therefore the ſaid *B.* doth inſiſt, that the ſaid Writing [or *Obligation*] thus delivered to the ſaid *A.* (no Security being found by the ſaid *D.* to indemnify the ſaid *B.* againſt the ſaid *A.* for the ſaid 40 *l.*) is not his Deed; and thereof he puts himſelf upon the Country; and the ſaid *A.* does likewiſe the ſame. *Judgment for the Plaintiff.* Trin. 11 *Ja. Rol.* 1348.

The like, that the Defendant delivered the Writing as an Eſcrow to be delivered to the Plaintiff, after one D. ſhould find the Defendant Security to indemnify him againſt the Plaintiff for the Monies.

Bro. Red. 201.

(11.) ——— When, &c. and pleads, that the ſaid Articles of Agrement mentioned in the ſaid Declaration, are not his Deed; and of this he puts himſelf upon his Country; and the ſaid *F.* doth the ſame likewiſe.

A Plea that Articles of Agreement are not his Deed.

(12.) ——— When, &c. and pleads, that he ought not to be charged with the ſaid Debt, by Virtue of the ſaid Bond, becauſe he ſaith, that upon the Day and Year in the Declaration above mentioned, he was impriſoned by the ſaid *A.* and

By Dureſs of Impriſonment pleaded to a Bond. Pl. Gen. 343.

others by his Contrivance at *D.* in the County of *S.* and there detained in Priſon until he the ſaid *B.* by Force and Dureſs of that Impriſonment, made, ſealed, and delivered the ſaid Bond to the ſaid *A.* and this, &c.

Replication. (13.) ——— That he ought not to be precluded from having his ſaid Action, becauſe he ſaith, that the ſaid *B.* at the Time of Executing the ſaid Bond was at large, and not in any Priſon, and executed the ſaid Bond to him the ſaid *A.* voluntarily and of his own Accord, and not by Force or Dureſs of the ſaid Impriſonment, as the ſaid *B.* hath above in his Plea alledged; and this he prays may be inquired of by the Country; and the ſaid *B.* doth the ſame likewiſe, &c.

The Defendant pleads a Suit in Chancery for the ſame Debt. Pl. Gen. 350.

(14.) ——— That the ſaid *A.* ought not to have or maintain his ſaid Action, becauſe he ſaith, that before the Day of Exhibiting the Bill of the ſaid *A.* into this Court, he the ſaid *R. A.* brought his Bill in his ſaid Majeſty's High Court of Chancery againſt the ſaid *B.* for and concerning the ſaid Sum of 100 *l.* in the ſaid Declaration above mentioned; which Bill, ſo brought in the ſaid Court of Chancery, is ſtill depending undiſcuſſed; and therefore the ſaid *B.* prays Judgment whether he ſhall be compelled further to anſwer in that reſpect, &c.

Payment at the Day pleaded to a Bond. Pl. Gen. 327.

(15.) ——— *After Oyer of the Condition*; Which being read and heard, the ſaid *B.* pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he paid the ſaid 50 *l.* to the ſaid *A.* upon the ſaid Feaſt-Day of St. *Michael* the Archangel, which was in the ſaid Year of our Lord, &c. [*mentioning the Year*] which he ought to have paid upon the ſame Feſtival, according to the Form and Effect of the ſaid Condition, to wit, at the Manſion-houſe of the ſaid *A.* at *N.* aforeſaid in the County aforeſaid; and this he is ready to verify, &c.

(16.) That

(16.) ——— That he ought not to be precluded from having his ſaid Action, becauſe he ſaith, that the ſaid *B.* did not pay the ſaid 50 *l.* to him the ſaid *A.* upon the ſaid Feaſt-Day of St. *Michael*, which was in the ſaid Year of our Lord, *&c.* which he the ſaid *B.* ought to have done according to the Form and Effect of the ſaid Condition, as he the ſaid *B.* hath above in his Plea alledged; and this he prays may be inquired of by the Country; and the ſaid *B.* doth the ſame likewiſe. Replication.

(17.) ——— When, *&c.* and pleads, that he ought not to be charged with the ſaid Debt, by Virtue of the ſaid Obligation, becauſe he ſaith, that he the ſaid *B.* at the Time of Executing the ſaid Obligation was under the Age of twenty-one Years, that is to ſay, of the Age of fifteen Years and no more; and this, *&c.* Within Age pleaded. Pl. Gen. 334.

(18.) ——— That he ought not to be precluded from having his ſaid Action, becauſe he ſaith, that the ſaid *B.* at the Time of Executing the ſaid Obligation was of the full Age of twenty-one Years and more, and not within the Age of twenty-one Years, in Manner and Form as the ſaid *B.* hath above in his Plea alledged; and this he prays may be enquired of by the Country; and the ſaid *B.* doth the ſame likewiſe, *&c.* Replication.

(19.) And the ſaid *J.* comes and defends the Force and Injury, when, *&c.* and pleads, that the ſaid *F.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *J.* in the Condition above named at *G.* aforeſaid in the County aforeſaid, at the ſaid Manſion-houſe of the ſaid *F.* on the ſaid 10th of *Auguſt* next after the Date of the ſaid Writing, between the Hours of one and two of the Clock in the Afternoon of the ſame Day, was ready and offered to pay to the ſaid *F.* the ſaid 20 *l.* which he ought to have paid him Plea, that Defendant tender'd the Money at the Day, and none was there to receive it, and that he is yet ready and tenders it in Court. 3 Inſtr. Cl. 123.

him at the ſame Houſe upon the ſame Day, and between the ſame Hours, according to the Form and Effect of the ſame Condition; and that neither the ſaid *F.* nor any one for him, nor in his Name, was ready at the ſaid Houſe, upon that Day between the ſame Hours, to receive the ſaid 20 *l.* of the ſaid *J.* and the ſaid *J.* further ſaith, that he at all Times after the ſaid Tender, and after the ſaid 10th of *Auguſt* next following the Date of the ſaid Obligation hitherto hath been ready, and ſtill is ready to pay the ſaid 20 *l.* to the ſaid *F.* and now brings the ſaid 20 *l.* into this Court to be received by the ſaid *F.* if he will receive the ſame; and this, *&c.* Wherefore, *&c.*

Replication. (20.) And the ſaid *F.* ſaith, that for any Thing above alledged by the ſaid *J.* in the ſaid Plea, he ought not to be precluded from having his ſaid Action againſt him, becauſe he ſaith, that the ſaid *J.* did not offer to pay the ſaid 20 *l.* to the ſaid *F.* upon the ſaid 10th Day of *Auguſt* next following the Date of the ſaid Writing, between the Hours before limited, according to the Form and Effect of the ſaid Condition, as the ſaid *J.* hath above alledged; and this he is ready to verify: Wherefore he prays Judgment and his ſaid Debt, together with his Damages occaſioned by the detaining of his ſaid Debt, to be adjudged to him, *&c.*

Rejoinder. (21.) And the ſaid *J.* as before ſaith, that he the ſaid *J.* did offer to pay the ſaid 20 *l.* to the ſaid *F.* at the ſaid Houſe upon the ſaid 10th Day of *Auguſt* next after the Date of the ſaid Obligation, between the Hours of One and two of the Clock in the Afternoon of the ſame Day, which he at the ſame Houſe upon the ſame Day, and between the ſame Hours, ought to have paid according to the Form and Effect of the ſame Condition, as he hath above alledged; and thereof he puts himſelf upon the Country; and the ſaid *F.* doth the ſame likewiſe: Therefore, *&c.*

(22.) And

(22.) And the ſaid *M.* by *J. A.* her Attorney, comes and defends the Force and Injury, when, &c. and prays Oyer of the ſaid Obligation, and 'tis read to her, &c. and ſhe likewiſe craves Oyer of the Condition of the ſaid Obligation, and 'tis read to her in theſe Words, to wit ——— [*The Condition being ſet out, you go on as follows*] which being heard and read, the ſaid *M.* ſaith, that ſhe ought not to be charged with the ſaid Debt, by Virtue of the ſaid Obligation, becauſe ſhe ſaith, that after the ſaid 29th Day of *September* which was in the Year of our Lord 1714. to wit, the 5th Day of *July*, in the Year of our Lord 1718. at the ſaid Pariſh of St. *Martins in the Fields*, it was corruptly agreed between the ſaid *Elizabeth*, and the ſaid *M.* and *C. D.* and *D. W.* that the ſaid *E.* ſhould advance and lend to the ſaid *M. C.* and *D.* the Sum of 100 *l.* and ſhould give them Time for the Payment thereof, until the 5th Day of *December* then next following; and that the ſaid *M. C.* and *D.* ſhould give and pay for the Loan thereof for the Time aforeſaid to the ſaid *Eliz.* the Sum of 5 *l.* 5 *s.* upon the ſaid 5th Day of *December* then next, for the Intereſt and Lucre thereof, and giving Time for the Payment of the ſaid 100 *l.* which ſaid 5 *l.* 5 *s.* do exceed the Rate of 5 *l.* for the Intereſt of 100 *l.* for one whole Year, contrary to the Form of the Statute in that Caſe made and provided, and afterwards, to wit, the ſaid 5th Day of *July* in the Year and at the Place aforeſaid in the ſaid Declaration above mentioned, the ſaid *Elizabeth*, in Purſuance of the ſaid corrupt Agreement, did advance and lend the ſaid 100 *l.* to the ſaid *M. C.* and *D.* and the ſaid Obligation mentioned in the ſaid Declaration was ſealed and delivered to the ſaid *Elizabeth* by the ſaid *M. C.* and *D.* as their Act and Deed; and the ſaid *M. C.* and *D.* then and there, to wit, the ſaid 5th Day of *July* in the ſaid Year, and at the Place in the ſaid Declaration above mentioned, paid the ſaid Sum of 5 *l.* 5 *s.* to the ſaid *Elizabeth*, for the Lucre and Intereſt of the

The late Statute of Uſury pleaded. Lilly's Entr. 173.

ſaid 100 *l.* and for giving Time for the Payment thereof until the ſaid 5th Day of *December* then next following, in Purſuance of and according to the Form and Effect of their ſaid corrupt Agreement, by means whereof the ſaid Obligation in the ſaid Declaration above mentioned, by Virtue of the Statute in that Caſe made and provided, is void in Law; and this ſhe is ready to verify: Wherefore ſhe prays Judgment, whether ſhe ought to be charged with the ſaid Debt by Virtue of the ſaid Obligation, *&c.*

Repliçation for a juſt Debt.

(23.) And the ſaid *Elizabeth* ſaith, that ſhe ought not to be precluded from having her ſaid Action againſt the ſaid *M.* by any Thing before by the ſaid *M.* in pleading alledged, becauſe ſhe ſaith, that the ſaid *M.* ſealed and delivered the ſaid Obligation to her as her Act and Deed, for a true and juſt Debt due from the ſaid *M.* to the ſaid *E.* Without that, that 'twas corruptly agreed between her the ſaid *E.* and the ſaid *M. C.* and *D.* in the Manner and Form as the ſaid *M.* hath above in her Plea alledged; and this ſhe is ready to verify: Wherefore ſhe prays Judgment and her ſaid Debt, together with her Damages occaſioned by detaining the ſame, to be adjudged to her.

Rejoinder and Iſſue.

(24.) And the ſaid *M.* as before, ſaith, that it was corruptly agreed between the ſaid *E.* and the ſaid *M. C.* and *D.* in the Manner and Form as ſhe the ſaid *M.* hath above in Pleading alledged; and of this ſhe puts herſelf upon her Country; and the ſaid *E.* doth likewiſe the ſame: Therefore let a Jury come, *&c.*

Pleas to Actions of Debt on Bail-Bonds.

(25.) When, &c. and craves Oyer of the Writing obligatory aforeſaid, &c. and 'tis read to him, &c. he likewiſe craves Oyer of the Condition of the ſame Writing, and it is read to him in theſe Words, (to wit) *The Condition of this Obligation is ſuch*, &c. [*here recite the Condition*] which being read and heard, the ſaid *Robert T.* the Younger, pleads, that the ſaid *E.* and *J.* ought not to have or maintain their Action againſt him, becauſe he ſaith, that after the Making of the ſaid Writing obligatory, and before the Day of the Exhibiting the aforeſaid Bill of the ſaid *E.* and *J.* (to wit) on *the Monday next after three Weeks of* St. *Michael* next following the Date of the aforeſaid Writing obligatory, and above mentioned in the ſaid Condition, he the ſaid *R. T.* the Younger above named in the ſaid Condition appeared before our ſaid Sovereign Lord the King at *Weſtminſter* aforeſaid, to anſwer to the ſaid *E.* and *J.* in the Action of Treſpaſs aforeſaid, and alſo to the Bill of the ſaid *E.* and *J.* againſt the ſaid *R. T.* the Younger, for 18*l.* upon Promiſes, according to the Form and Effect of the Condition aforeſaid; and this he is ready to verify by the Record of the ſaid Appearance now remaining in the Court of our ſaid Sovereign Lord the King before himſelf: Wherefore he prays Judgment, if the ſaid *E.* and *J.* ought to have or maintain their ſaid Action againſt him, &c.

Comperuit ad diem to a Declaration upon a Bail-Bond by the Son, where the Father, for whom he was bound, was of the ſame Name.

The Return.

(26.) And the ſaid *E.* and *J.* reply, that they, by any Thing by the ſaid *R. T.* above in Pleading alledged, ought not to be precluded from having their ſaid Action againſt him, becauſe they ſay, that there is not any ſuch Record of the Appearance of the ſaid *R. T.* before the ſaid Lord the King in the aforeſaid Court of the ſaid Lord

Replication thereto.

the King, before the King himſelf at *Weſtminſter*, on *Monday* next after three Weeks of St. *Michael*, according to the Form and Effect of the ſaid Condition, as the ſaid *R. T.* the Younger, hath above alledged in his Plea; and this they are ready to verify: Wherefore they demand Judgment and their Debt aforeſaid, together with their Damages by reaſon of Detaining the ſaid Debt to be adjudged to them, *&c.*

Rejoinder thereto.

(27.) And the ſaid *R. T.* the Younger, ſaith, that there is ſuch a Record of the aforeſaid Appearance of the ſaid *R. T.* the Younger, in the ſaid Court of the ſaid Lord the King before himſelf at *Weſtminſter* aforeſaid, on *Monday* next after three Weeks of St. *Michael* next following after the Date of the Writing obligatory aforeſaid now remaining in the ſaid Court of the ſaid Lord the King before himſelf at *Weſtminſter* aforeſaid, as he the ſaid *R. T.* the Younger, hath above in Pleading alledged; and this he is ready to verify by the Record, *&c.* therefore the ſaid *R. T.* the Younger, is commanded, that he have here the ſaid Record on *Tueſday* next after three Weeks of St. *Michael*, at his Peril, *&c.* The ſame Day is given to the ſaid *E.* and *J. &c.* At which Day come before our ſaid Sovereign Lord the King at *Weſtminſter*, the Parties aforeſaid by their ſaid Attornies, and the ſaid *Robert* hath not the Record of the Appearance aforeſaid by him above alledged in the Manner aforeſaid, but fails of producing ſuch Record; **Therefore it is conſidered,** that the ſaid *E.* and *J.* do recover againſt the ſaid *R.* their Debt aforeſaid, and alſo 63 *s.* for their Damages, which they have ſuſtained, as well by reaſon of Detaining their ſaid Debt, as for their Expences and Coſts laid out by them about their Suit in this Cauſe adjudged to the ſaid *E.* and *J.* with their Aſſent by the ſaid Court of our ſaid Sovereign Lord the King; and be the ſaid *R. T.* amerced, *&c.*

Judgment thereon.

(28.) When,

(28.) ——— When, &c. and prays Oyer of the ſaid Bond, and 'tis read to him, &c. he likewiſe prays Oyer of the Condition of the ſaid Bond, and 'tis read to him in theſe Words, to wit, The Condition of this Obligation is ſuch, that if the above bounden *E. K.* do appear before our ſaid Sovereign Lord the King at *Weſtminſter*, on *Tueſday next after the Morrow of All-Souls*, to anſwer to *R. B.* of a Plea of Treſpaſs, and alſo to his Bill for 60 *l.* Debt, according, &c. then this Obligation to be void, or elſe to remain in full Force, Strength and Virtue; which being read and heard the ſaid *B.* pleads, that he ought not to be charged by Virtue of the ſaid Bond, becauſe he ſaith, that before the Execution of that Bond, to wit, by a certain Act made in the Parliament of our late Sovereign Lord King *Henry* the Sixth, held at *Weſtminſter* in the County of *Middleſex*, on the 25th Day of *February* in the 23d Year of his Reign, it was amongſt other Things enacted by the Authority of the ſame Parliament, that no Sheriff, Under-Sheriff, Sheriff's Clerk or Under-Sheriff's Clerk, Steward or Bailiff of a Franchiſe, Serjeant or Bailiff or Coroner, ſhall take any Thing by Colour of his Office, by himſelf or any other Perſon to his Uſe, of any Perſon for Making of any Return or Panel, and for the Copy of any Panel, but 4 *d.* and that the Sheriff and all other the ſaid Officers and Miniſters ſhould diſcharge out of Priſon all and all Manner of Perſons by them or either of them arreſted, or being in their Cuſtody, by Virtue of any Writ, Bill or Warrant in any Perſonal Action, or by reaſon of any Indictment of Treſpaſs upon reaſonable Security of ſufficient Perſons having Sufficient within the County where ſuch Priſoner ſhould be ſo diſcharged upon Bail or Mainpriſe, to keep his Days in ſuch Places as the ſaid Writs, Bills or Warrants do require (ſuch Perſon or Perſons as ſhould be or then had been in their Cuſtody in Execution upon *Capias Utlagat'*, Excommunication, Security of the Peace, and

The Stat. of H. VI. pleaded, that the Bail-Bond was taken Colore Officii for Eaſe and Favour. Lilly's Entr. 126.

and all ſuch Perſons, as were or ſhould be committed to Priſon by the Special Warrant of any Juſtice of the Peace and Vagabonds refuſing to labour according to the Form of the Statute of Labourers, only excepted) ; and that no Sheriff or other Officer or his Miniſters ſhould take or cauſe to be taken or made any Bond for any Cauſe aforeſaid or by Colour of his Office, ſave only to themſelves, of any Perſon, by any Perſon, which ſhould be in his Cuſtody by Order of Law, unleſs under the Name of his Office, and under the Condition underwritten, that the ſaid Priſoners ſhould appear at the Day contained in the ſaid Writs, Bills or Warrants, and in ſuch Places as the ſaid Writs, Bills or Warrants ſhould require ; and if either of the ſaid Sheriffs or other Officers or Miniſters aboveſaid ſhould take any Bond in any other Form by Colour of their Office, that it ſhould be void, as by the ſame Act of Parliament, amongſt other Things, more fully appears ; and the ſaid *B.* ſaith, that after the Making of the ſaid Act of Parliament, to wit, at the Time of the Execution of the ſaid Bond, the ſaid *E. K.* was arreſted by her ſaid Majeſty's Precept, called a Bill of *Middleſex*, directed to the ſaid Sheriff of *Middleſex*, iſſuing out of her ſaid Majeſty's Court before her ſaid Majeſty herſelf here, to wit, at *Weſtminſter* aforeſaid, returnable before her ſaid Majeſty at *Weſtminſter*, on the ſaid *Wedneſday* next after the Morrow of *All-Souls* then next following, to anſwer to the ſaid *R. B.* of a Plea of Treſpaſs, and alſo to the Bill of him the ſaid *R. B.* againſt the ſaid *E. K.* for 60 *l.* Debt [or *a Debt of* 60 *l.*] and the ſaid *B. G.* and *C. P.* being then Sheriff for the ſaid County of *Middleſex*, of and upon the ſaid Arreſt, took the ſaid Bond, under the Condition aforeſaid, for Eaſe and Favour to be ſhewn to the ſaid *E. K.* by the ſaid *B. G.* and *C. P.* concerning his Impriſonment, and for having and obtaining his Enlargement therefrom ; which ſaid Bond the ſaid *G. B.* and *C. P.* took by Colour of their Office, contrary to the Form of the ſaid Statute ; and ſo the ſaid *B.* ſaith,

ſaith, that the ſaid Bond brought into Court, taken and made in the ſaid Form, and for the Cauſe aforeſaid, by Force of the ſaid Statute is void in Law; and this the ſaid *B.* is ready to verify: And therefore prays Judgment, whether he ought to be charged with the ſaid Debt, by Virtue of the ſaid Bond, *&c.*

Pleas to Actions of Debt on Bonds of Indemnity.

(29.) ——— Which being read and heard the ſaid *B.* pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that, at any Time after the Execution of the ſaid Bond, upon which the ſaid *A.* hath above declared againſt him, to this Time, he the ſaid *A.* hath not been damnify'd in his Perſon or in any of his Lands or Tenements, Goods or Chattels by the ſaid *W.* or any other Perſon or Perſons whatſoever, for or by reaſon of the ſaid recited Bond or Condition, or of any Sum or Sums of Money in the ſaid Condition mentioned, for or by reaſon of any Actions, Suits, Expences, Coſts, Damages or Demands whatſoever for or in reſpect thereof, contrary to the Form and Effect of the ſaid Condition of the ſaid Bond; and this he is ready to verify, *&c.*

Non damnificatus pleaded to a Counter-Bond. Tho. Entr. 145.

Pleas in Debt upon Bonds of Award.

Defendant Protesting, that the Arbitrator made no Award, pleads, that no Award was delivered. Mo. Intr. 58, 59.

(30.) ——— Which being read and heard, the ſaid *B.* ſaith, that the ſaid *A.* ought not to have his ſaid Action againſt him, becauſe proteſting, that the ſaid Arbitrator did not make any Award, Order, Determination or Judgment, before the ſaid 6th Day of *April*, in the ſaid Condition above mentioned, between him the ſaid *B.* and the ſaid *A.* of and upon the ſaid Premiſſes in the ſaid Condition above ſpecify'd, he the ſaid *B.* for Plea ſaith, that after the Execution of the ſaid Bond, and before the ſaid 6th Day of *April* in the ſaid Condition above ſpecify'd, no Award, Order, Determination or Judgment between him and the ſaid *A.* of and upon the Premiſſes in the ſaid Condition mentioned, was delivered or ready to be delivered to the ſaid Parties under the Hand and Seal of the ſaid Arbitrator, according to the Form and Effect of the ſaid Condition; and this he is ready to verify, *&c.*

Replication, that it was delivered under the Hand and Seal of the Arbitrator.

(31.) ——— Ought not to be precluded from having his ſaid Action, becauſe he ſaith, that after the Execution of the ſaid Bond, and before the ſaid 6th Day of *April*, to wit, on the 5th Day of *April* in the ſaid 8th Year of his ſaid Majeſty's Reign at *C.* aforeſaid, the ſaid Arbitrator took upon himſelf the Burthen of the ſaid Award, Order, Determination and Judgment of and upon the Premiſſes in the ſaid Condition above ſpecify'd, and by his Writing indented, under his Hand and Seal, one Part of which, dated the ſame Day and Year laſt above mention'd, he the ſaid *A.* brings into Court, did award, order, determine and adjudge between the ſaid *A.* and *B.* in the Manner and From following, to wit, that the ſaid *B.* ſhould pay to the ſaid *A.* upon the 1ſt Day of *May* then next following the Date of the ſaid Award, the Sum of 10 *l.* of

of lawful Money of *Great Britain*, &c. [*reciting the Award*] as in the ſaid Award is more fully contained, which ſaid Award, Order, Determination and Judgment after the Execution of the ſaid Bond, and before the ſaid 6th Day of *April*, to wit, on the ſaid 5th Day of *April* in the ſaid 8th Year of his ſaid Majeſty's Reign at *C.* aforeſaid, was ready to be delivered to the ſaid Parties under the Hand Seal of the ſaid Arbitrator, according to the Form and Effect of the ſaid Condition. And the ſaid *A.* ſaith, that the ſaid *B.* did not pay the ſaid 10 *l.* to him upon the ſaid 1ſt Day of *May*, as he ought to have done, according to the Form and Effect of the ſaid Award; and this he is ready to verify; and therefore prays Judgment and his Debt, together with his Damages occaſioned by Detaining his ſaid Debt, to be adjudged to him, &c. Averment.

(32.) And the ſaid *B.* as before, ſaith, that no Award, Order, Determination or Judgment between the ſaid *B.* and the ſaid *A.* of and upon the Premiſſes in the ſaid Condition mentioned, was ready to be delivered to the ſaid Parties, under the Hand and Seal of the ſaid Arbitrator, after the Execution of the ſaid Bond, and before the ſaid 6th Day of *April* in the Condition above ſpecify'd, as he the ſaid *A.* hath above alledged; and thereof he puts himſelf upon the Country; and the ſaid *A.* doth the ſame likewiſe: Therefore, &c.

Pleas in Actions of Debt upon Bonds for the Performance of Covenants relating to Lands.

Defendant pleads a Surrender of a Copyhold Eſtate to Plaintiff, and his Admittance thereupon; and that Plaintiff quietly enjoy'd, according to the Condition of the Bond.
1 Saund. 145, 146, 147, 148, 149.

(33.) ——— Becauſe he ſaith, that the ſaid next Court for the ſaid Manor of *Wimbledon* after the Execution of the ſaid Obligation was held within the ſaid Manor, the [*ſuch a Day and Year*] at which Day he the ſaid *S. B.* in the ſaid Court ſurrendered the ſaid Meſſuage, &c. in the ſaid Condition mentioned, into the Hands of *J. L.* Eſq; then Lord of the ſaid Manor of *Wimbledon*, to the Uſe and Behoof of the ſaid *J. W.* his Heirs and Aſſigns, to which ſaid *J. W.* the ſaid Lord of the ſaid Manor at the ſame Court by his Steward, granted the ſaid Tenements, with the Appurtenances, to have and to hold to the ſaid *J. W.* his Heirs and Aſſigns at the Will of the Lord, according to the Cuſtom of the ſaid Manor; and he the ſaid *J. W.* was admitted then in Court ſole Tenant of the ſaid Tenements ſo, as aforeſaid, ſurrender'd, according to the Cuſtom of the ſaid Manor; and that at all Times after the Making of the ſaid Surrender, he the ſaid *J. W.* hath lawfully, peaceably and quietly held and enjoy'd the ſaid Tenement, with the Appurtenances, without any Moleſtation, Diſturbance, Suit or Interruption of the ſaid *S. B.* and *L. S.* in the ſaid Condition named, or either of them, or the Heirs, Executors, Adminiſtrators or Aſſigns of either of them, lawfully claiming, or who have claimed any Eſtate, Right, Title or Intereſt of, in or out of the ſaid Premiſſes or any Part thereof, from, by or under the ſaid *S. B.* and *L. S.* or either of them, or the Heirs, Executors, Adminiſtrators or Aſſigns of them or either of them, according to the Form and Effect of the ſaid Condition; and this he is ready to verify, &c.

(34.) ——— Ought not to be precluded from having his Action againſt the ſaid *B.* becauſe he ſaith, that the ſaid Meſſuage in the ſaid Condition mentioned, now is and Time out of Mind hath been Parcel of the ſaid Manor of *Wimbledon*, and demiſed and demiſable by the Lord of the ſaid Manor, or by the Steward of the ſaid Manor for the Time being, by Copy of Court-Roll of the ſaid Manor to any Perſon or Perſons, willing to accept the ſame in Fee Simple, or for Term of Life, or Years, at the Will of the Lord, according to the Cuſtom of the ſaid Manor; and the ſaid *J. W.* further ſaith, that long before the Execution of the ſaid Obligation, one Sir *E. C.* Knt. was ſeiſed of the ſaid Manor, with the Appurtenances, of which, *&c.* in his Demeſne as of Fee, and being ſo ſeiſed, the ſaid *E. C.* afterwards, and before the Execution of the ſaid Obligation, to wit, [*ſuch a Day and Year*] at a Court-Baron held for the ſaid Manor at *Putney* within the ſaid Manor [*ſuch a Day and Year*] before *W. L.* Gent. then Steward of the ſaid Manor, granted the ſaid Tenement, with the Appurtenances, by Copy of Court-Roll of the ſaid Manor, to one *P. H.* for the Term of her Life, and the Remainder thereof, after her Death, to the ſaid *L. S.* and his Heirs for ever, by Virtue of which Grant the ſaid *P. H.* entered upon the ſaid Tenement, with the Appurtenances, and was thereof ſeiſed in her Demeſne as of a Freehold, for the Term of her Life, at the Will of the Lord, according to the Cuſtom of the ſaid Manor, the Remainder thereof belonging to the ſaid *L. S.* and his Heirs; and the ſaid *P. H.* being ſo ſeiſed, and the Remainder thereof belonging to the ſaid *L. S.* and his Heirs, in the Manner aforeſaid, he the ſaid *L. S.* afterwards, to wit, at a Court-Baron of the Right Honourable *H.* Earl of *H.* Sir *J. W.* *&c.* then Lords of the ſaid Manor, at *M.* within the ſaid Manor [*ſuch a Day and Year*] before *E. M.* Gent. then Steward of the ſaid Manor, came and ſurrender'd his ſaid Remainder

Plaintiff replies and ſets forth a Title in a third Perſon for Life, and ſhews, that ſhe entered and ouſted him.

mainder of and in the ſaid Tenement, with the Appurtenances (amongſt other Things) into the Hands of the Lord of the ſaid Manor, to the Uſe and Behoof of the ſaid *P. H.* for and during the Term of her natural Life, and after her Deceaſe to the Uſe and Behoof of the ſaid *L. J.* and *J. S.* his then Wife for and during the Term of their natural Lives, and the Life of the longeſt Liver of them, and, after their Deceaſe, to the Uſe of the Heirs and Aſſigns of the ſaid *L. S.* for ever, which ſaid *L. S.* and *J.* his ſaid Wife, then preſent in Court, pray'd to be admitted to the ſaid Remainder of and in the ſaid Meſſuage, with the Appurtenances, according to the Form and Effect of the ſaid Surrender, to whom the ſaid Lord of the ſaid Manor, by his ſaid Steward, granted Seiſin thereof, to have and to hold to the ſaid *L. S.* and *J. S.* and the Heirs of the ſaid *L. S.* at the Will of the Lord, according to the Cuſtom of the ſaid Manor, and according to the Form and Effect of the ſaid Surrender; and the ſaid *J. W.* further ſaith, that the ſaid *L. S.* and *P. H.* afterwards, and before the Execution of the ſaid Obligation, to wit, [*ſuch a Day and Year*] at the Pariſh aforeſaid died; and the ſaid *J. W.* further ſaith, that after the Execution of the ſaid Obligation, and alſo after the ſaid Surrender made by the ſaid *B.* to the ſaid *J. W.* in the Manner aforeſaid, to wit, [*ſuch a Day and Year*] the ſaid *J. S.* claiming a Right and Title to the ſaid Meſſuage, with the Appurenances, under the ſaid *L. S.* for the Term of her Life, by Virtue of the ſaid Surrender made by the ſaid *L. S.* in the Manner aforeſaid, entered into the ſaid Meſſuage, with the Appurtenances, upon the Poſſeſſion of the ſaid *J. W.* thereof, and him the ſaid *J. W.* expelled and amoved from his Poſſeſſion, and was and is ſeiſed thereof in her Demeſne, as of a Freehold for the Term of her Life, at the Will of the Lord, according to the Cuſtom of the ſaid Manor; and this the ſaid *J. W.* is ready to verify, *&c.*

Note; *The Defendant demurred to the Replication, and the Plaintiff joined in Demurrer; whereupon Judgment was given for the Plaintiff.*

Pleas to Actions of Debt upon Bonds to perform Covenants relating to Apprentices.

(35.) ——— Which being heard and read the ſaid *C.* pleads, that the ſaid *H.* ought not to have or maintain his Action thereof againſt him, becauſe he ſaith, that from the Time of the Execution of the ſaid Bond, [or *Obligation*] to this Time, he hath well and faithfully obſerved, performed and fulfilled all and ſingular the Matters in the ſaid Condition mentioned on his Part to be performed, according to the Form and Effect of the ſaid Condition, to wit, at *London* aforeſaid, in the Pariſh and Ward aforeſaid; and this he is ready to verify: Wherefore he prays Judgment whether the ſaid *H.* ought to have or maintain his ſaid Action againſt him, *&c.*

A Plea of Conditions performed generally to an Action on a Bond conditioned for an Apprentice's faithful Behaviour. Lilly's Entr. 114.

(36.) And the ſaid *H.* replies, that for any Thing by the ſaid *C.* above in his Plea alledged, he ought not to be precluded from having or maintaining of his ſaid Action thereof againſt him, becauſe he ſaith, that before the Execution of the ſaid Bond [or *Obligation*] and during the Time which he the ſaid *J. F.* remained in the Service of the ſaid *H.* to wit, on the 1ſt Day of *February*, in the aboveſaid 30th Year of the Reign of King *Charles* the Second, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, he the ſaid *J. F.* had and received the Sum of 40 *l.* of the Money of the ſaid *H.* to be paid by him the ſaid *J.* as a Servant of him the ſaid *H.* and

Replication, Breach aſſigned, that the Apprentice waſted and converted 40 l. of his Maſter's Money to his own Uſe.

that the ſaid *J.* then and there waſted and eloigned the ſaid 40 *l.* and unjuſtly detained the ſame from the ſaid *H.* and then and there converted and diſpoſed thereof to the Uſe of him the ſaid *J.* of which he the ſaid *H.* afterwards, to wit, on the 1ſt Day of *May*, in the 1ſt Year of the Reign of their preſent Majeſty's, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, gave Notice to the ſaid *C.* and requeſted him to pay the ſaid 40 *l.* to him the ſaid *H.* and that the ſaid *C.* then abſolutely refuſed and ſtill doth refuſe to pay the ſaid 40 *l.* to the ſaid *H.* and this he is ready to verify: Wherefore he prays Judgment and his ſaid Debt, together with his Damages occaſioned by the Detaining of his ſaid Debt, to be adjudged to him, *&c.*

Rejoinder denies the Waſting and Converſion.

(37.) And the ſaid *C.* rejoins, that the ſaid *J. F.* did not eloign, waſte, detain, nor convert or diſpoſe of the ſaid 40 *l.* of the Monies of the ſaid *H.* to his own proper Uſe, or any Part thereof, in the Manner and Form as the ſaid *H.* hath above in his Replication alledged; and of this he puts himſelf upon the Country; and the ſaid *H.* doth the ſame likewiſe: Therefore, *&c.*

Iſſue thereupon.

Pleas to Actions of Debt for Rent.

Under Age and a Diſagreement to the Demiſe pleaded in Bar in Debt for Rent.
Clift. Entr. 149.

(38.) ——— When, *&c.* and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that he the ſaid *B.* at the Time of Making the ſaid Demiſe in the ſaid Declaration above ſuppoſed to have been made, and alſo upon the Feaſt of the Annunciation of the bleſſed Virgin *Mary*, in the ſaid 6th Year of the Reign of our ſaid Sovereign Lord the King, was under the Age of twenty-one Years; and that he the ſaid *B.* being under the ſaid Age of twenty-one Years at the Time of Making

Making the ſaid Demiſe, and before the ſaid Feaſt of the Annunciation of the bleſſed Virgin *Mary* in the aforeſaid 6th Year of his ſaid Majeſty's Reign, to wit, on the 20th Day of *March* in that ſame Year, left the Poſſeſſion of the ſaid Premiſſes, ſo as aforeſaid demiſed, and diſagreed to the ſaid Demiſe, to wit, at *W.* aforeſaid; Without that, that the ſaid *B.* held or occupied the ſaid Tenements, ſo as aforeſaid demiſed after his ſaid Diſagreement, as the ſaid *A.* by his ſaid Declaration above ſuppoſes; and this he is ready to verify, *&c.*

Pleas to Actions for an Eſcape.

(39.) And the ſaid *J.* by *W. W.* his Attorney, comes and defends the Force and Injury, *&c.* and ſaith, that the ſaid *A.* ought not to have or maintain his ſaid Action thereof againſt him, becauſe he ſaith, that after the ſaid Judgment was ſo obtained, as aforeſaid, and after the Commitment of the ſaid *H.* to the Cuſtody of the ſaid *J.* in Execution for the Debt and Damages aforeſaid, in the Manner aforeſaid, and before the ſaid Eſcape above ſuppoſed to be made, to wit, on the 10th Day of *June*, in the Year of our Lord 1697. the ſaid *H.* being then in Execution for the Debt and Damages aforeſaid, under the Cuſtody of the ſaid *J.* in the Priſon of the Marſhalſea in *Southwark*, in the County of *Surry*, he the ſaid *H.* with Force and Arms broke the ſaid Priſon in *Southwark* aforeſaid, in the ſaid County of *Surry*, and then and there made his Eſcape out of the ſaid Priſon againſt the Will of the ſaid *J.* and fled to Places unknown to the ſaid *J.* and the ſaid *J.* further ſaith, that after the ſaid Eſcape, ſo as aforeſaid made at *Southwark* in the ſaid County of *Surry*, he the ſaid *J.* recently, diligently and cloſely purſued the ſaid *H.* in Order to retake

The Marſhal pleads freſh Purſuit to an Action for an Eſcape. 2 Mo. Entr. 145.

him, and from thence made and continued his Purſuit from Place to Place, and from County to County, until the ſaid *J.* afterwards, and before the Exhibiting of this Bill, to wit, on the 13th Day of *June* in the Year aforeſaid, retook the ſaid *H.* in that Purſuit at the ſaid Pariſh of St. *Martin*'s in the Fields in the ſaid County of *Middleſex*, and put him the ſaid *H.* into the ſaid Priſon in Execution for the ſaid Debt and Damages, at the Suit of the ſaid *A.* and doth yet detain him there, and the ſaid *H.* hath hitherto remained, and now doth remain in the ſaid Priſon under the Cuſtody of the ſaid *J.* in Execution for the ſaid Debt and Damages at the Suit of the ſaid *A.* which Eſcape of the ſaid *H.* out of the ſaid Priſon ſo as aforeſaid made, is the ſame Eſcape of which the ſaid *A.* above complains againſt him; and this he is ready to verify: And therefore he prays Judgment, whether the ſaid *A.* ought to have or maintain his ſaid Action on that Occaſion againſt him, *&c.*

Priſoner retaken thereupon.

Averment.

Replication Proteſtando.

(40.) And the ſaid *A.* ſaith, that he ought not by reaſon of any Thing before alledged, to be precluded from having his ſaid Action againſt the ſaid *J.* becauſe by Proteſtation, that the ſaid *H.* did not break the ſaid Priſon, nor eſcape out of the ſaid Priſon, or fly to Places unknown to the ſaid *J.* and proteſting alſo, that the ſaid *J.* did not make freſh Purſuit, in order to retake the ſaid *H.* as he the ſaid *J.* in Pleading thereof hath above alledged, the ſaid *A.* for his Plea ſaith, as before, that the ſaid *J.* wilfully and voluntarily permitted the ſaid *H.* to go at large whereſoever he would, and eſcape out of his Cuſtody, contrary to the Will of him the ſaid *A.* as the ſaid *A.* hath above complain'd thereof againſt the ſaid *J.*

Traverſe.

Without that, that the ſaid *J.* in the Purſuit aforeſaid, retook the ſaid *H.* and put him into the Priſon aforeſaid in Execution for the ſaid Debt and Damages at the Suit of the ſaid *A.* in Manner and Form as the ſaid *J.* hath above in his Pleading

ing alledged; and this he is ready to verify: Wherefore he prays Judgment and his Damages occaſioned by the Premiſſes to be adjudged to him, &c.

(41.) And the ſaid *J.* as before, ſaith, that he in the ſaid Purſuit retook the ſaid *H.* and put him into the ſaid Priſon in Execution for the Debt and Damages aforeſaid, at the Suit of the ſaid *A.* in Manner and Form as he the ſaid *J.* above in Pleading thereof hath alledged; and of this he puts himſelf upon the Country; and the ſaid *A.* doth the like: Therefore, &c.

Rejoinder and Iſſue.

(42.) And the ſaid *William Briggs* perſonally comes and defends the Force and Injury, when, &c. and pleads, that the ſaid Lady *Catharine* Queen Dowager of *England* ought not to have or maintain her ſaid Action againſt him, becauſe he avers, that after the Commitment of the ſaid *Francis Hind*, to the Cuſtody of the ſaid *W. Briggs*, in Execution for the Damages aforeſaid, and at the Time of the ſaid Eſcape above ſuppoſed to have been permitted, namely, on the ſaid 10th Day of *Auguſt* in the 6th Year of the Reign of our Sovereign Lord and Lady *William* and *Mary* King and Queen of *England*, the ſaid *Francis* being in Execution for the ſaid Damages, under the Cuſtody of the ſaid *W. Briggs*, in their Majeſties Priſon ſituate in the Pariſh of St. *George*, *Southwark*, in the County of *Surry*, he the ſaid *Francis* with Force and Arms, &c. broke the ſaid Priſon, and then and there eſcaped out of the ſaid Priſon againſt the Will of the ſaid *W.* and wandered to Places unknown to the ſaid *W.* and further the ſaid *W.* pleads, that in Fact he the ſaid *W.* quietly, diligently, and recently, after the ſaid Eſcape made, as aforeſaid, at *Southwark* aforeſaid in the ſaid County of *Surry*, followed the ſaid *Francis* in order to take him, and from thence-forward made and continued a freſh Purſuit from Place to Place, and from County to County, until he the ſaid *W.*

A Plea to an Action of Debt upon an Eſcape, that the Priſoner had made a Tortious Eſcape, and that the Defendant made freſh Purſuit and retook him, and that he remained and now is in Cuſtody again.

afterwards, and before the Exhibiting the ſaid Bill, namely, on the 1ſt Day of *September*, in the 6th Year aforeſaid, retook the ſaid *Francis*, upon ſuch freſh Purſuit at *Weſtminſter* aforeſaid in the ſaid County of *Middleſex*, and put him in Execution for the ſaid Damages at the Suit of the ſaid Lady *Catharine* Queen Dowager of *England*, and now retains him there, and the ſaid *Francis* being in the ſaid Priſon hath from that Time hitherto remained, and ſtill doth remain there in Execution for the Damages aforeſaid, which ſaid Eſcape of the ſaid *Francis* out of the ſaid Priſon, as aforeſaid, is the ſame Eſcape, whereof the ſaid Lady *Catharine* Queen Dowager of *England* complains againſt the ſaid *W.* and this he is ready to verify: Whereupon he prays Judgment, whether the ſaid Lady *Catharine* Queen Dowager of *England* ought to have or maintain her ſaid Action againſt him, *&c.*

Edward Northey.

Replication, that the Defendant voluntarily permitted him to eſcape, with a Traverſe for Breaking the Priſon.

(43.) And the ſaid Lady *Catharine* Queen Dowager of *England* replies, that ſhe, notwithſtanding any Thing above alledged by the ſaid *W.* in his Plea in Bar, ought not to be precluded from her ſaid Action thereupon againſt him, becauſe ſhe avers, that after the ſaid Commitment of the ſaid *Francis* to the Cuſtody of the ſaid *W. Briggs* in Execution for the ſaid Damages, he the ſaid *W. Briggs* of his own Wrong and againſt the Will of the ſaid Lady *Catharine* Queen Dowager of *England*, permitted the ſaid *Francis Hide* to depart, eſcape and go at large, as the ſaid Lady *Catharine* Queen Dowager of *England* hath above declared (ſhe the ſaid Lady *Catharine* Queen-Dowager not having had any Satisfaction for her Damages aforeſaid); Without that, that he the ſaid *Francis* broke the ſaid Priſon and eſcaped out of the ſame, without the Conſent of the ſaid *William*, in ſuch Manner and Form as the ſaid *William* hath above alledged in his Plea; and this ſhe is ready to verify: Wherefore ſhe

prays

prays Judgment, and that her ſaid Debt, together with her Damages occaſioned by detaining the ſame, may be awarded to her, &c.

Creſſewell Levinz.

Demurrers.

(1.) AND the ſaid *W.* replies, that his ſaid Writ ought not to be quaſhed, by reaſon of any Thing above pleaded by the ſaid *E.* to quaſh the Writ aforeſaid, becauſe he ſaith, that the ſaid Plea pleaded in the Manner and Form aforeſaid, and the Matter therein contained are not ſufficient in Law to quaſh the ſaid Writ; to which Plea he is under no Neceſſity nor in any wiſe bound by the Law of the Land to anſwer; and this he is ready to verify: Wherefore he prays Judgment, and that his Writ may be adjudged good, &c.

A Demurrer to a Plea in Abatement in the Common Pleas. 2 Saund. 31.

(2.) And the ſaid *E.* (inaſmuch as he hath above alledged ſufficient Matter in Law to quaſh the Writ aforeſaid, which he is ready to verify; which Matter the ſaid *W.* doth not deny, nor in any wiſe anſwer thereto, but totally refuſes the Verifying thereof,) as before, prays Judgment of the Writ aforeſaid, and that it may be quaſhed, &c. and becauſe the Juſtices here are willing to adviſe themſelves of and concerning the Premiſſes before they give Judgment therein, a Day is here given to the ſaid Parties till the Morrow of the *Holy Trinity*, to hear their Judgment therein, becauſe the ſaid Juſtices here are not yet ready, &c. At which Day, as well the ſaid *W.* as the ſaid *E.* appear here in this Court by their ſaid Attornies; and thereupon all and ſingular the Premiſſes

A Joinder in Demurrer thereto.

The Continuances of the Demurrer.

miſſes being viewed, and by the Juſtices here fully underſtood, it appears to the ſaid Juſtices, that the Plea pleaded in the Manner and Form aforeſaid, and the Matter therein contained are not ſufficient in Law to quaſh the Writ of the ſaid *W.* Therefore it is conſidered, that the ſaid Writ be adjudged good, and that the ſaid *E.* anſwer in Chief, *&c.* and thereupon the ſaid *E.* by his ſaid Attorney, comes and defends the Force and Injury, when, *&c.* and pleads, [*ſo go on with the Plea in Chief*].

The Judgment for the Defendant to anſwer in chief.

K. B.

A Demurrer to a Plea in Abatement with an Imparlance for the Plaintiff.

(3.) And the ſaid *W.* prays a Day to imparl to the Plea aforeſaid, and it is granted to him, *&c.* and thereupon a Day is given to the ſaid Parties to be before our ſaid Sovereign Lord the King at *Weſtminſter*, till *Friday* next after the Morrow of the *Holy Trinity* (to wit) to the ſaid *W.* to imparl to the Plea aforeſaid, and then to reply; at which Day the Parties aforeſaid come before our Sovereign Lord the King by their ſaid Attornies, and the ſaid *W.* replies, that his Bill againſt the ſaid *J.* ought not to be quaſhed, by reaſon of any Thing above alledged in the Plea aforeſaid of the ſaid *W.* becauſe he ſaith, that the ſaid Plea above pleaded by the ſaid *J.* in the Manner and Form aforeſaid, and the Matter therein contained are not ſufficient in Law to quaſh the ſaid Bill of the ſaid *W.* againſt the ſaid *J.* and that he is under no Neceſſity, nor by the Law of the Land bound to anſwer the ſaid Pea in any other Manner; and this he is ready to verify: Wherefore for Want of a ſufficient Anſwer in this Cauſe, he the ſaid *W.* prays Judgment and his Damages occaſioned by the Premiſſes, to be adjudged to him, *&c.*

A Joinder in Demurrer thereto.

(4.) And the ſaid *J.* rejoins, that the ſaid Plea above pleaded by him, in the Manner and Form aforeſaid, and the Matter therein contained are good and ſufficient in Law to quaſh the ſaid Bill

of

of the ſaid *W.* againſt the ſaid *J.* which Plea and the Matter therein contained, he the ſaid *J.* is ready to verify and prove as the Court ſhall direct; and becauſe the ſaid *W.* doth not anſwer the ſaid Plea, nor in any wiſe deny it, he the ſaid *J.* as before, prays Judgment of the Bill aforeſaid, and that it may be quaſhed, *&c.* But becauſe the Court of our ſaid Sovereign Lord the King are not now here adviſed to give Judgment of and concerning the Premiſſes, a Day therefore is given to the ſaid Parties till *Friday* next after the Octaves of the *Holy Trinity*, to be before our ſaid Sovereign Lord the King to hear their Judgment of and concerning the Premiſſes, for that the ſaid Court of our ſaid Sovereign Lord the King are not here ready, *&c.* At which Day the ſaid Parties appear by their ſaid Attornies, before our ſaid Sovereign Lord the King at *Weſtminſter*; whereupon all and ſingular the Premiſſes being viewed, and here fully underſtood by the Court of our ſaid Sovereign Lord the King, and mature Deliberation being had thereon, for that it appears to this Court, that the Plea aforeſaid above pleaded by the ſaid *J.* in the Manner and Form aforeſaid, and the Matter therein contained are not ſufficient in Law to quaſh the Bill aforeſaid of the ſaid *W.* againſt the ſaid *J.* **It is conſidered** [or **adjudged**] by the ſame Court here, that the ſaid *J.* have a further Day to plead in Chief to the ſaid Declaration of the ſaid *W.* And a further Day is here given by the Court of our ſaid Sovereign Lord the King to the ſaid Parties, till *Saturday* on the Morrow of St. *Martin*, to plead to the ſaid Declaration of the ſaid *W.* At which Day as well the ſaid *W.* by his ſaid Attorney, as alſo the ſaid *J.* by *L. T.* his Attorney, appear before our ſaid Sovereign Lord the King at *Weſtminſter*, and the ſaid *J.* defends the Force and Injury, when, *&c.* and pleads, [*ſo go on with the Plea in Chief*]. 2 Saund. 210.

The Continuance of the Demurrer.

The Judgment, that the Defendant ſhall plead in Chief.

A further Day given to the Defendant to plead in Chief.

The Appearance of the Parties at the Day.

The Plea in Chief.

(5.) And

To a Declaration in the King's Bench.

(5.) And now here at this Day (to wit) on *Monday* next after the Morrow of the *Holy Trinity* came as well the ſaid *A.* by his ſaid Attorney, as the ſaid *B.* by *C. D.* his ſaid Attorney, and the ſaid *B.* defends the Force and Injury, when, &c. and prays Judgment of the ſaid Declaration, becauſe he ſaith, that the ſaid Declaration and the Matters therein contained are not ſufficient in Law to compel the ſaid *B.* to anſwer to the ſaid Declaration, to which ſaid Declaration the ſaid *B.* is under no Neceſſity, nor in any wiſe bound by the Law of the Land to anſwer; and this he is ready to verify: Wherefore, for want of a ſufficient Declaration in this Cauſe, the ſaid *B.* prays Judgment of the ſaid Declaration; and that the ſame may be quaſhed, &c.

Joinder in Demurrer.

(6.) And the ſaid *A.* ſaith, that the Declaration aforeſaid ought not to be quaſhed by any Thing above alledged by the ſaid *B.* in his Plea aforeſaid, becauſe he ſaith, that the Declaration and the Matter therein contained are good and ſufficient in Law to compel the ſaid *B.* to make anſwer thereto, which ſaid Declaration and the Matters therein contained he the ſaid *A.* is ready to verify and prove in ſuch Manner as the Court ſhall direct; and becauſe the ſaid *B.* doth not in any wiſe deny nor make any Anſwer to the ſaid Declaration, the ſaid *A.* prays Judgment and his Damages by reaſon of the Premiſſes [*if in Caſe*; *otherwiſe*, *if in Debt*, *thus*] prays Judgment and his Debt aforeſaid, together with his Damages by reaſon of Detaining the Debt, to be adjudged to him; and becauſe the Court of our ſaid Sovereign Lord the King [or *this his Majeſty's Court*] are not now here yet adviſed to give their Judgment of and concerning the Premiſſes, a Day is therefore given to the ſaid Parties to be before our ſaid Sovereign Lord the King at *Weſtminſter*, till *Tueſday* next after three Weeks from the Day of the *Holy Trinity* to hear their Judgment thereon,

on, for that this Court of our ſaid Sovereign Lord the King are not yet adviſed, &c.

A Demurrer to a Declaration in the Common Pleas.

(7.) And the ſaid *B.* by *J. C.* his Attorney, comes and defends the Force and Injury, when, &c. and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that the ſaid Declaration and the Matters therein contained are not ſufficient in Law for him the ſaid *A.* to have his ſaid Action to be maintained againſt the ſaid *B.* to which ſaid Declaration, in the Manner and Form as the ſame is ſet forth, he the ſaid *B.* is under no Neceſſity, nor in any wiſe bound by the Law of the Land to anſwer in any other Manner: Wherefore by reaſon of the Defect of a ſufficient Declaration in this Caſe, he the ſaid *B.* prays Judgment, and that the ſaid *A.* may be precluded from having or maintaining his ſaid Action againſt him, &c.

A Joinder in Demurrer thereto.

(8.) And the ſaid *A.* inaſmuch as he hath above alledged in his ſaid Declaration ſufficient Matter in Law for him the ſaid *A.* to have his ſaid Action to be maintained againſt the ſaid *B.* which ſaid Declaration and the Matters therein contained, he the ſaid *B.* hath not denied, nor in any manner made Anſwer to, but doth altogether refuſe the verifying thereof, prays Judgment and his Debt aforeſaid, together with his Damages accaſioned by Detaining thereof, to be awarded to him, &c. And becauſe the Juſtices here in Court are willing to adviſe themſelves of and concerning the Premiſſes, before they give their Judgment therein, a Day is therefore given to the ſaid Parties until in three Weeks from the Day of the *Holy Trinity*, to hear their Judgment thereon, for that the ſaid Juſtices are not yet adviſed, &c.

If in Caſe obſerving the Alteration before in Pl. 1.

When there are Cauſes of Demurrer, purſuant to the Statue of the Amendment of the Law, then you go on after the Demurrer:

(9.) And for Cauſes of Demurrer to be ſet forth according to the Form of the Statute in that Caſe made and provided, he the ſaid *B.* ſhews to this Court theſe Cauſes following, to wit, &c. [*ſetting forth the Cauſes*].

K. B.

A Demurrer to a Plea.

(10.) And the ſaid *A.* replies, that he ought not to be precluded from having his Action againſt the ſaid *B.* by any Thing above alledged by him in his Plea, becauſe he ſaith, that the Plea aforeſaid, in the Manner and Form as the ſame is above pleaded by the ſaid *B.* and the Matters therein contained are not ſufficient in Law to preclude the ſaid *A.* from having his ſaid Action againſt the ſaid *B.* To which Plea the ſaid *A.* is under no Neceſſity, nor in any wiſe bound by the Law of the Land to anſwer in any other Manner; and this he is ready to verify: Whereupon for Want of a ſufficient Anſwer in this Caſe, the ſaid *A.* prays Judgment and his * Damages by reaſon of the Premiſſes, to be adjudged to him, &c.

A Joinder in Demurrer thereto.

(11.) And the ſaid *B.* rejoins, that the ſaid Plea in the Manner and Form as the ſame is above pleaded by him the ſaid *B.* and the Matters therein contained are in Law good and ſufficient to preclude the ſaid *A.* from having his ſaid Action againſt him the ſaid *B.* which Plea and the Matters therein contained, the ſaid *B.* is ready to verify and prove as the Court ſhall direct; and becauſe the ſaid *A.* doth not deny, nor in any

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* *Obſerving the Alteration, as before, in Plea* 1. *according to the Nature of the Action.*

wiſe

wiſe anſwer the ſaid Plea, the ſaid *B.* as before, prays Judgment, and that the ſaid *A.* may be precluded from having his ſaid Action to be maintained againſt him the ſaid *B.* And becauſe the Court of our ſaid Sovereign Lord the King, *&c.* [*as before in Plea* 2.]

C. B.

(12.) There is no Difference between a Demurrer to a Plea in the Common and that in the King's Bench, and therefore 'tis needleſs to repeat it, but there is in the Joinder in Demurrer; as for Example, that in the Common Pleas is thus:

A Demurrer to a Plea in the C. B.

(13.) And the ſaid *A.* (inaſmuch as he hath above alledged in his Plea ſufficient Matter in Law to preclude the ſaid *A.* from having his ſaid Action againſt him the ſaid *B.* which he is ready to verify, which Matter the ſaid *A.* doth not deny, nor in any wiſe anſwer it, but altogether refuſes to admit the ſame to be verify'd) as before, prays Judgment, and that the ſaid *A.* may be precluded from having his ſaid Action againſt him, *&c.* And becauſe the Juſtices, *&c.* [*as before in Pl.* 11.]

A Joinder in Demurrer to a Plea in Bar in the C. B.

A Demurrer to a Replication *differs in no other Manner from a Demurrer to a* Declaration, *than in theſe Inſtances it is proper in a Demurrer to a* Replication *to ſay:*

(14.) And the ſaid *B.* ſaith, (or *rejoins*) that the Replication aforeſaid, in the Manner and Form as the ſame is above pleaded by the ſaid *A.* and the Matters therein contained are not ſufficient in Law for him the ſaid *A.* to have his Action to be maintained, *&c.* *And further, when you come to the Words*, and this he is ready to verify, *it is proper to ſay:* Whereupon for Want of a ſufficient

cient Replication in this Cauſe, *inſtead of the Words*, for Want of a ſufficient Declaration, &c.

In like Manner obſerving the ſame Alteration, the Joinder in a Demurrer to a Replication thus :

(15.) And the ſaid *A.* ſaith, that the Replication aforeſaid, in the Manner and Form as the ſame is above pleaded by him, and the Matters therein contained are good and ſufficient in Law to maintain the ſaid Action of the ſaid *A.* againſt him the ſaid *B.* which ſaid Replication and the Matters therein contained the ſaid *A.* is ready to verify and prove, as the Court ſhall direct, and becauſe the ſaid *B.* doth not anſwer the ſaid Replication, nor in any wiſe deny it, the ſaid *A.* prays Judgment and his Damages by reaſon of the Premiſſes to be adjudged to him, &c.

So in the Common Pleas obſerve the ſame Difference in a Demurrer to a Replication, there you ſay thus :

(16.) And the ſaid *A.* inaſmuch as he hath above alledged in his ſaid Replication ſufficient Matter in Law for him the ſaid *A.* to have his ſaid Action to be maintained againſt the ſaid *B.* which he is ready to verify, which ſaid Replication and the Matters therein contained he the ſaid *B.* doth not deny, nor in any wiſe anſwer thereto, but doth altogether refuſe the verifying thereof [or *the ſame to be verify'd*] prays Judgment and his Debt aforeſaid, together with his Damages occaſioned by detaining the ſame, to be adjudged to him, &c.

So in the Caſe of a Joinder or Surrejoinder, &c. *you muſt obſerve the ſame Difference as above, only remember, that in the Concluſion of the Plaintiff*, he prays Judgment and his Debt *or* Damages, &c. *as the Caſe is*, to be adjudged to him, *and in the Concluſion of the Defendant*, he

he prays Judgment, [*as before*] and that the *(Plaintiff)* may be precluded from having his ſaid Action againſt him, &c.

(17.) And now at this Day (to wit) on *Wedneſday* next after three Weeks of St. *Michael* this ſame Term, till which Day the ſaid *W.* had Leave to imparl, and then to anſwer to the Bill aforeſaid, came before our ſaid Sovereign Lord the King at *Weſtminſter*, as well the ſaid *Henry* who ſues, as well, &c. by his ſaid Attorney, as the ſaid *William*, by *T. C.* his Attorney, and the ſaid *William* defends the Force and Injury, when, &c. and all the Contempt, &c. and whatſoever, &c. and ſaith, that he doth not ſue in the ſaid Court Chriſtian, contrary to the Royal Prohibition [or *contrary to his Majeſty's Prohibition*] directed to him for that Purpoſe, as the ſaid *Henry Croucher* who ſues as well, &c. doth above ſuppoſe by his ſaid Declaration; and thereof he puts himſelf upon the Country; and the ſaid *Henry* doth likewiſe the ſame: But in order to obtain a Conſultation in this Cauſe, the ſaid *W. C.* pleads, that the Declaration aforeſaid, in the Manner and Form as the ſame is expreſſed, and the Matters therein contained are not ſufficient in Law for him the ſaid *W. C.* to be precluded from demanding the Tithes aforeſaid of the ſaid *H. C.* in the Court Chriſtian aforeſaid, and that he is under no Neceſſity, nor in any wiſe bound by the Law of the Land to anſwer the ſaid Declaration, in the Manner and Form as the ſame is ſet forth in any other Manner howſoever; and this he is ready to verify: Therefore for Want of a ſufficient Declaration of the ſaid *Henry Croucher*, who ſues as well, &c. in this Particular the ſaid *W. C.* prays Judgment, and his Majeſty's Writ of Conſultation to be granted to him in this Cauſe, &c. A Demurrer to a Declaration in Prohibition.

(18.) And

Joinder in Demurrer thereto.

(18.) And the ſaid *Henry Croucher*, as to the Plea aforeſaid of the ſaid *W. C.* above pleaded, in order to have his ſaid Majeſty's Writ of Conſultation (inaſmuch as he hath alledged ſufficient Matter in Law to preclude the ſaid *W. C.* from his having the Tithes aforeſaid of the ſaid *Henry Croucher*, which he is ready to verify; which Matter the ſaid *W. C.* doth not deny, nor in any wiſe anſwer thereto, but altogether refuſes to admit the verifying thereof, prays Judgment, and that the ſaid *W. C.* may not have a Writ of Conſultation; and becauſe the Court of our ſaid Sovereign Lord the King now here are willing to inform themſelves, &c. [*as in the former Precedent Pl.* 6.]

A Demurrer to a Sci' Fa'. 2 Saund. 341.

(19.) And the ſaid *Henry* pleads, that the Writ of *Scire Facias* aforeſaid, as the ſame is ſued and proſecuted out of this Court, and the Matters therein contained, are not ſufficient in Law for them the ſaid *Matthew*, *Richard*, *Hercules* and *Peter* to have their Execution aforeſaid for the ſaid 160 *l.* to be maintained againſt the ſaid *Henry*, and that he is under no Neceſſity, nor in any wiſe bound by the Law of the Land to make anſwer to the ſaid *Scire Facias* made in the Manner and Form aforeſaid; and for Cauſes of Demurrer in Law, according to the Form of the Statute in ſuch Caſe made and provided, he the ſaid *Henry* ſhews to this Court theſe Cauſes following, that is to ſay, For that it does not appear by the ſaid Writ of *Scire Facias*, that the ſaid *H. M.* had at any Time the ſaid 160 *l.* or any Part thereof in his Hands, or in the Hands of any of his Officers, by Virtue of his Majeſty's Writ of *Fieri Facias* above ſpecify'd in the ſaid Writ of *Scire Facias*, and for that no Execution ought to have been ſued out againſt the ſaid *H. M.* upon the Return of the Writ of *Scire Facias* in the Writ of *Scire Facias* above mentioned: Therefore he prays Judgment of the Writ of *Scire Facias* aforeſaid, and that the ſaid *M. R. H.* and *P.* may be precluded

cluded from having their Execution aforeſaid againſt him, &c.

(20.) And the ſaid *M. R. H.* and *P.* (inaſmuch as they have above alledged ſufficient Matter in Law to have their Execution aforeſaid againſt the ſaid *H.* for the ſaid 160 *l.* in the Manner aforeſaid, which they are ready to verify; which Matter the ſaid *H.* doth not deny, or in any wiſe anſwer thereto, but altogether refuſes to admit the ſame to be verify'd), as before, pray Judgment and their Execution aforeſaid for the ſaid 160 *l.* againſt the ſaid *H.* to be adjudged to him, &c. A Joinder in Demurrer thereto.

(21.) And the ſaid *T. R.* ſaith, that the Plea aforeſaid above pleaded in Bar to the Cognizance of the ſaid *T.* by the ſaid *J. M.* in the Manner and Form aforeſaid, and the Matter therein contained are not ſufficient in Law to preclude the ſaid *T.* from having a Return of the Goods aforeſaid, to which Plea the ſaid *Thomas* is not under a Neceſſity, or in any wiſe bound by the Law of the Land to anſwer in any other Manner; and this he is ready to verify: Therefore for Want of a ſufficient Plea in Bar the ſaid *Thomas* prays Judgment and a Return of the Goods aforeſaid, together with his Damages, Expences and Coſts laid out by him about his Suit in this Cauſe, according to the Form of the Statute in ſuch Caſe made and provided, to be adjudged to him, &c. A Demurrer to a Cognizance in Replevin. 1 Saund. 194.

(22.) And the ſaid *J. M.* ſaith, that the Plea aforeſaid above pleaded by him the ſaid *J.* in the Manner and Form aforeſaid in Bar to the Cognizance aforeſaid of the ſaid *Thomas*, and the Matters therein contained, are ſufficient in Law to preclude him the ſaid *Thomas* from having a Return of the ſaid Goods, which ſaid Plea in Bar, and the Matter therein contained, the ſaid *J. M.* is ready to verify and prove as the Court ſhall direct; and becauſe the ſaid *Thomas* doth not anſwer to the ſaid Plea, nor as yet in any Manner deny the ſame, the ſaid *J.* as before A Joinder thereto.

fore, prays Judgment, and his Damages occaſioned by Taking and Detaining his ſaid Goods, to be adjudged to him, &c.

A Demurrer to a Plea in Bar to an Avowry and Cognizance.

(23.) And the ſaid *T. A. W.* and *F.* ſay, that the Plea aforeſaid of the ſaid *Richard* above pleaded in Bar to the Avowry and Cognizance aforeſaid, and the Matter therein contained, are not ſufficient in Law for them the ſaid *T. A. W.* and *T.* to be precluded from juſtly avowing and acknowledging the Taking of the Cattle aforeſaid in the ſaid Place in which, &c. and that they are under no Neceſſity, nor in any wiſe bound by the Law of the Land to anſwer to the ſaid Plea, as pleaded in the Manner and Form aforeſaid; and this they are ready to verify; Wherefore for Want of a ſufficient Plea of the ſaid *Richard* in this Particular, they the ſaid *T. A. W.* and *F.* pray Judgment, and a Return of the Cattle aforeſaid, together with their Damages and Expences ſuſtained by them about their Suit, to be adjudged to them, according to the Form of the Statute in ſuch Caſe made and provided, &c.

A Joinder in Demurrer thereto.

(24.) And the ſaid *Richard* (inaſmuch as he hath above alledged ſufficient Matter in Law for his having his ſaid Action to be maintain'd againſt the ſaid *T. A. W.* and *F.* which he is ready to verify; which Matter the ſaid *T. A. W.* and *F.* do not deny, nor in any wiſe anſwer it, but refuſe to admit the ſame to be verify'd, as before, prays Judgment, and his Damages occaſioned by Taking and unjuſtly Detaining the Cattle aforeſaid, to be adjudged to him, &c.

3 Saund. 287.

A Demurrer to a Plea in Bar to an Indictment.

(25.) And *T. F.* Knight, Coroner and Attorney of our Sovereign Lord the King, in the Court of our ſaid Sovereign Lord the King before the King himſelf, who in this Particular proſecutes for our ſaid Sovereign Lord the King, ſaith in Behalf of his ſaid Majeſty, that the Plea aforeſaid above pleaded by the ſaid *N.* in the Manner aforeſaid, and the Matter therein contained,

tained, are not ſufficient in Law to preclude his ſaid Majeſty from having the Preſentment aforeſaid; wherefore for Want of a ſufficient Anſwer of the ſaid *N. S.* in this Particular, he prays Judgment, and that the ſaid *N. S.* may be convicted of the Premiſſes above ſpecified in the ſaid Preſentment, *&c.*

A Joinder in Demurrer thereto.

(26.) And the ſaid *N. S.* by his ſaid Attorney, wherefore and inaſmuch as the ſaid Coroner and Attorney of our ſaid Sovereign Lord the King doth not anſwer to the ſaid Plea, nor in any wiſe deny it, but altogether refuſes to admit the Verifying thereof, which Plea and the Matter therein contained, he the ſaid *N. S.* is ready to verify by his ſaid Attorney, prays Judgment, and that he may be diſcharged by the Court from the Premiſſes, *&c.*

2 Saund. 159, 160.

A Demurrer to a Counter-Plea.

(27.) And the ſaid *E.* ſaith, that the Counter-Plea aforeſaid of the ſaid *W.* to the Voucher to Warranty of the ſaid *E.* is not ſufficient in Law to preclude the ſaid *E.* from having the Voucher aforeſaid; and that he is under no Neceſſity, nor by the Law of the Land bound to anſwer the ſaid Counter-Plea pleaded in the Manner and Form aforeſaid, and for Cauſes of Demurrer, [*ſetting them forth,*] &c.

2 Saund. 32.

A Joinder in Demurrer thereto.

28. And the ſaid *W.* ſaith, that the Counter-Plea aforeſaid, pleaded by the ſaid *W.* in the Manner and Form aforeſaid, and the Matter therein contained, are good and ſufficient in Law to preclude the ſaid *E.* from having his Voucher to Warranty aforeſaid; and becauſe the ſaid *E.* doth not deny, nor in any wiſe anſwer the ſaid Counter-Plea, he the ſaid *W.* (as before) prays Judgment, whether the ſaid *E.* ought to be admitted to ſuch Voucher of the ſaid *J. S.* to Warranty, *&c.*

A Demurrer to a Plea to an Audita Querela.

(29.) And the ſaid *E.* replies, that the ſaid Plea above pleaded in Bar by the ſaid *A.* and the Matter therein contained, are not ſufficient in Law to preclude him the ſaid *E.* from avoiding the Execution upon the Recovery aforeſaid; to which Plea the ſaid *E.* is under no Neceſſity, nor in any wiſe bound by the Law of the Land, to anſwer; and this he is ready to verify: Wherefore for Want of a ſufficient Plea in this Caſe, the ſaid *E.* as before, prays Judgment, and that the ſaid *A.* may be precluded from having any Execution whatſoever of and upon the Recovery aforeſaid, and that he may be reſtored to all Things that he hath been deprived of by Means of the Judgment aforeſaid, *&c.*

A Joinder in Demurrer thereto.

(30.) And the ſaid *A.* (inaſmuch as he hath above alledged ſufficient Matter in his ſaid Plea to preclude the ſaid *E.* from avoiding the Execution upon the Recovery aforeſaid; which he is ready to verify; which Matter the ſaid *E.* doth not deny, nor in any wiſe anſwer it, but totally refuſes to admit the Verifying thereof) as before, prays Judgment, and that the Recovery aforeſaid may ſtand in all its Force and Effect, *&c.*

2 Saund. 147.

A Demurrer to a Plea to an Information.

(31.) And the ſaid *T. T.* Knt. Coroner and Attorney of our ſaid Sovereign Lord the King, who proſecutes in this Caſe for our ſaid Sovereign Lord the King, replies for his ſaid Majeſty, that his ſaid Majeſty ought not to be precluded from having his ſaid Information againſt the ſaid *J.* notwithſtanding any Thing above alledged by the ſaid *J.* in his Plea thereto, becauſe he ſaith, that the ſaid Plea above pleaded by the ſaid *J.* in the Manner aforeſaid, and the Matter therein contained, are not ſufficient in Law to preclude his ſaid Majeſty from having his ſaid Information; wherefore for Want of a ſufficient Plea of the ſaid *J.* in this Caſe, he prays Judgment, and that the ſaid *J.* may be convicted of the Premiſſes above ſpecify'd in the ſaid Information, *&c.*

(32.) And

(32.) And the ſaid *J. S.* by his ſaid Attorney, (inaſmuch as the ſaid Coroner and Attorney of our ſaid Sovereign Lord the King hath not anſwered for his ſaid Majeſty to the Plea aforeſaid, nor in any wiſe denied it, but totally refuſes to admit the Verifying thereof; which Plea and the Matter therein contained he the ſaid *J.* is ready to verify, prays Judgment, and that he may be diſcharged from the Premiſſes by this Court, *&c.*

A Joinder in Demurrer thereto.

1 Saund. 273.

(33.) ——— When, *&c.* and pleads, that the ſaid Dean and Chapter ought not to have or maintain their ſaid Action againſt him, becauſe as to the Breach of the Covenant aforeſaid above aſſigned, as to the Want of Repairing the Chancel, he the ſaid *C. G.* ſaith, that the ſaid Dean and Chapter did not demiſe to the ſaid *G. H.* the Chancel aforeſaid, in the Manner and Form as the ſaid Dean and Chapter have above alledged in their ſaid Declaration; and thereof he puts himſelf upon the Country; and the ſaid Dean and Chapter do likewiſe the ſame: And as to Breaking the Covenant aforeſaid above aſſigned, in not repairing the Barn aforeſaid, he the ſaid *C.* pleads, that the ſaid Declaration of the aforeſaid Dean and Chapter in that Particular, and the Matter therein contained, are not ſufficient in Law for them the ſaid Dean and Chapter to have their ſaid Action thereof to be maintained againſt the ſaid *C.* to which Declaration in that Particular, he the ſaid *C.* is under no Neceſſity, nor by the Law of the Land bound to anſwer in any other Manner; and this he is ready to verify: Wherefore for want of a ſufficient Declaration in that Particular, he the ſaid *C.* prays Judgment; and that the ſaid Dean and Chapter may be precluded from having their ſaid Action thereof againſt him the ſaid *C. &c.*

A Demurrer to one Part of a Breach of Covenant, and an Iſſue to the other Part; with the Award of the Venire, as well to try the Iſſue and to aſſeſs the Damages, if Judgment goes for the Plaintiff upon the Demurrer.

A Joinder in Demurrer.

(34.) And the ſaid Dean and Chapter reply, that they ought not to be precluded from having their ſaid Action thereof againſt the ſaid *C. G.* notwithſtanding any Thing above alledged by him in his Plea aforeſaid, becauſe they ſay, as to Breaking the Covenant aforeſaid above aſſigned, in not repairing the Barn aforeſaid, they the ſaid Dean and Chapter ſay, that the Declaration aforeſaid in that Particular, and the Matter therein contained are good and ſufficient in Law for them the ſaid Dean and Chapter to have their ſaid Action thereupon to be maintained againſt the ſaid *C.* which ſaid Declaration in that Particular, and the Matter therein contained, they the ſaid Dean and Chapter are ready to verify and prove as the Court ſhall direct; and becauſe the ſaid *C.* doth not anſwer to the Declaration in that Particular, nor hitherto in any Manner deny it, they the ſaid Dean and Chapter pray Judgment and their Damages occaſioned by breaking the ſaid Covenant above aſſigned, as to the ſaid Defect of repairing the Barn aforeſaid, to be adjudged to them, *&c.* But becauſe the Court of our ſaid Sovereign Lord the King now here are not yet adviſed to give their Judgment of and concerning the Premiſſes, whereof the Parties aforeſaid have ſubmitted themſelves to the Judgment of the Court, a Day is therefore given to the ſaid Parties, till *Wedneſday* next after three Weeks of St. *Michael* to be before our ſaid Sovereign Lord the King to hear their Judgment of and concerning the Premiſſes, for that the Court of our ſaid Sovereign Lord the King now here are not yet determined, *&c.* And as well to try the ſaid Iſſue above joined between the Parties aforeſaid, to be tried by the Country, as alſo to inquire what Damages the ſaid Dean and Chapter have ſuſtained by reaſon of Breaking the Covenant aforeſaid, whereof the ſaid Parties have ſubmitted themſelves to the Judgment of the Court, if it happen Judgment be given therein for the ſaid Dean and Chapter againſt the ſaid *C.* let a Jury therefore come before

fore our ſaid Sovereign Lord the King at *Weſtminſter*, on *Wedneſday* next after three Weeks of the *Holy Trinity*, and who neither, &c. to recognize, &c. becauſe as well, &c. The ſame Day is given to the ſaid Parties to be there, &c.

A Demurrer to a Plea in an Audita Querela. 2 Saund. 147.

(35.) And the ſaid *Edward Turner* ſaith, that the ſaid Plea by him the ſaid *Alexander Davis* above pleaded in Bar, and the Matters therein contained are not ſufficient in Law to Bar [or *preclude*] him the ſaid *Edward* from vacating or avoiding the Execution upon the ſaid Recovery, to which ſaid Plea he the ſaid *Edward* is under no Neceſſity, or bound by the Law to give any Anſwer; and this he is ready to verify: Wherefore for the Inſufficiency of the ſaid Plea in that Reſpect, the ſaid *Edward*, as before, prays Judgment, and that the ſaid *Alexander Davis* may be barred [or *precluded*] from having any Execution whatſoever of and upon the ſaid Recovery, and that he may be reſtored to all Things, which he hath been deprived of by Means of the ſaid Judgment, &c.

Joinder.

(36.) And the ſaid *Alexander*, inaſmuch as he hath above alledged ſufficient Matter in his ſaid Plea to Bar [or *preclude*] the ſaid *Edward* from Vacating and Avoiding the Execution upon the ſaid Recovery, which he is ready to verify, and which Matter the ſaid *Edward* hath not denied, nor given any Anſwer thereto, but hath abſolutely refuſed to admit the Truth thereof: Therefore the ſaid *Alexander*, as before, prays Judgment, and that the ſaid Recovery may ſtand in its full Force and Effect, &c.

A Joinder in Demurrer to a Replication in Debt.

(37.) And the foreſaid *Edward Hamond* ſaith, that the Plea aforeſaid, above pleaded by way of Replication, in Manner and Form aforeſaid, and the Matter therein contained are good and ſufficient in Law to have the Action of the ſaid *Edward Hamond* to be maintain'd againſt the ſaid *Henry Garrard*, which Plea, and the Matter therein contained, he the ſaid *Edward Hamond* is

ready to verify as the Court, &c. And becauſe the aforeſaid *Henry Garrard* hath not anſwered to that Plea, nor any ways hitherto denied it, he the ſaid *Edward Hamond*, as above, prayeth Judgment and his Debt aforeſaid, together with his Damages occaſioned by detaining of his Debt, to be adjudged to him, &c. But becauſe the Court of our Lord the King now here have not yet conſidered what Judgment to give of and upon the Premiſſes, a Day therefore is given to the ſaid Parties aforeſaid, before the Lord the King at *Weſtminſter*, until *Friday* next after the Morrow of the *Holy Trinity*, to hear their Judgment of and upon the Premiſſes, becauſe the Court of our ſaid Lord the King are not yet, &c.

Devaſtavit.

A **Devaſtavit** returned upon a **Writ** of **Enquiry** againſt an Adminiſtratrix, and **Sci' Fa'** to the Adminiſtratrix, who maketh Default, and Judgment againſt her own Goods.

(1.) AT which Day here cometh the ſaid *William*, by his ſaid Attorney, and the Sheriff (to wit) *P. P.* Knt. now delivered here an Inquiſition taken before him at *B.* in the ſaid County on the 18th Day of *April* laſt paſt, by the Oath of twelve, &c. by which it is found, that the ſaid *T. B.* and *S.* his Wife, Adminiſtratrix of the Goods and Chattels, which were of the ſaid *B.* have ſold, eloined or converted, and diſpoſed of to their own Uſe, diverſe Goods and Chattels, which were of the ſaid *B.* at the Time of his Death in the Hands of the ſaid *T.* and *S.* after the Death of the ſaid *B.* to the Value of 12 *l.* Part of the Debt above mention'd: And thereupon the aforeſaid *W.* offered himſelf the 4th Day againſt the aforeſaid *T.* and *S.* in the ſaid Action, and they being ſolemnly called did not appear, but made Default, and the Sheriff now returns, that by *W. S.* and *J. P.* honeſt, &c. he hath made it known to the aforeſaid *T.* and *S.* that they ſhould be

be here at this Day, to ſhew Cauſe in the Manner aforeſaid, &c. Therefore it is adjudged, that the ſaid *W.* have an Execution againſt the ſaid *T.* and *S.* for the ſaid 12 *l.* Part of the aforeſaid Debt, to be levied of the proper Goods and Chattels of the ſaid *T.* and *S.* by reaſon of their Default, &c.

Deviſe.

(1.) —— WHereas *F. B.* the Elder, deceaſed, was when alive ſeiſed in his Demeſne as of Fee of four Meſſuages, &c. [*naming the Lands*] with the Appurtenances, in *C.* in the County of *M.* and being ſo ſeiſed thereof, on the 18th Day of *June* in the Year of our Lord 1656. made his Laſt Will and Teſtament in Writing, and thereby gave and deviſed the Tenements aforeſaid, with the Appurtenances, after the Deceaſe of *Anne* his then Wife, to *F. B.* the younger Son of *R. B.* and the Heirs Males of his Body lawfully begotten; and if the ſaid *F. B.* ſhould die without Heir Male of his Body lawfully iſſuing, then that the ſaid Tenements, with the Appurtenances, ſhould remain to *M. G.* Couſin of the ſaid *F. B.* the Elder, and the Heirs Males of his Body lawfully begotten; and afterwards, to wit, on the 1ſt Day of *July*, in the Year aforeſaid, he the ſaid *F. B.* the Elder, died at *C.* aforeſaid in the County aforeſaid, ſeiſed of the ſaid Tenements in the Manner aforeſaid, after whoſe Deceaſe the ſaid *Anne* afterwards, to wit, on the 30th Day of *March* in [*ſuch a Year*] died at *C.* aforeſaid in the County aforeſaid, after which Deceaſe of the ſaid *Anne*, the ſaid *F. B.* the Younger, by Virtue of the ſaid Deviſe, entered into the ſaid Tenements, with the Appurtenances,

The Manner of ſetting forth a **Deviſe in Tail** by one ſeiſed in **Fee**, an Eſtate for **Life** to A. by **Implication** —The **Remainder** over.

purtenances, and was thereof ſeiſed in his Demeſne as of Fee-Tail, that is to ſay, to him and the Heirs of his Body lawfully begotten, &c.

Theſ. Brev. 108.

The Manner of Pleading a Deviſe of a Reverſion of a Manor, till the Son of the Deviſee ſhould attain the Age of twenty-one Years.

2 Saund. 363.

(2.) ——— And the ſaid *T. F.* being ſo poſſeſſed thereof, and the ſaid *Jacinth* being ſeiſed of the Reverſion of the Manor and Tenements aforeſaid, with the Appurtenances, in his Demeſne as of Fee, he the ſaid *Jacinth* afterwards, to wit, upon the 9th Day of *September* in the Year of our Lord 1656. at the ſaid Pariſh of *Stoke* in the County aforeſaid, made his Laſt Will and Teſtament in Writing; and by ſuch his Laſt Will and Teſtament gave and deviſed the ſaid Manor and Tenements, with the Appurtenances, to the ſaid *Thomas Sacheverell*, till another of the Sons of the ſaid *Thomas Sacheverell* begotten, or to be begotten, ſhould attain his Age of twenty-one Years, and afterwards, that is to ſay, the ſame Day and Year, he the ſaid *Jacinth* died at the Pariſh of *Stoke* aforeſaid in the County aforeſaid, ſeiſed of the Reverſion of the ſaid Manor and Tenements, with the Appurtenances, in the Manor aforeſaid; and further the ſaid *Thomas Sacheverell* pleads, that he, after the Making of the ſaid Will, and alſo at the Time of the Death of the ſaid *Jacinth*, had two Sons, to wit, *William Sacheverell* and *Ambroſe Sacheverell*, at the Pariſh of *Stoke* aforeſaid in the County aforeſaid, and that none of the Sons of the ſaid *Thomas Sacheverell* have yet attained the Age of twenty-one Years, after the Deceaſe of which *Jacinth Sacheverell*, he the ſaid *Thomas Sacheverell*, by Virtue of the ſaid Deviſe, became and yet is ſeiſed of the Reverſion of the Manor and Tenements aforeſaid, with the Appurtenances, demiſed to the ſaid *Thomas Frogatt*, in the Manner aforeſaid, in his Demeſne as of a Freehold, for the Term of his Life, and being ſo ſeiſed thereof, &c.

The Manner of pleading a Deviſe of an Annuity, with a Nomine Pœnæ.

(3.) ———And being ſo poſſeſſed thereof the ſaid *Thomas Coningsby* afterwards, to wit, on the

10th

10th Day of *Auguſt* in the Year of our Lord 1616. at *Bodenham* aforeſaid, made his Laſt Will and Teſtament in Writing, and by the ſame Teſtament (amongſt other Things) gave and deviſed to the ſaid *Elizabeth Baskervile* and *Thomas Baskervile* her Son, the Sum of 5 *l.* a Year out of his Demeſne Lands of *Orleton* and *Aſhwood-Park*; To have and to hold to the ſaid *Elizabeth* and *Thomas* her Son, for and during the Term of their natural Lives, and the Life of the longeſt Liver of them; and if it ſhould happen the ſaid Rent, or any Part thereof, to be in Arrear and unpaid three Days after a Month of St. *Michael*, and the Annunciation of the Bleſſed Virgin *Mary*, they ſhould enter and diſtrain, and hold the Diſtreſs until the Rent ſhould be paid, and 10 *s.* for every Day afterwards, as a *Nomine Pœnæ*, until the ſaid Rent ſhould be paid, and after that the ſaid *Thomas Baskervile* ſhould attain the Age of thirteen Years, living his Mother, then the ſaid *Thomas* ſhould have 20 *l.* yearly of the ſaid 50 *l.* deviſed, for his Maintenance during the Life of his Mother, and then the whole, deviſed in the Manner aforeſaid, *&c.* ——— And the ſaid *Thomas Coningsby* did by his ſaid Laſt Will and Teſtament make and conſtitute the ſaid *Fitz-William Coningsby* Eſq; his Son, Executor thereof, and afterwards (to wit) on the 1ſt Day of *May* in the Year of our Lord 1618. died at *Bodenham* aforeſaid poſſeſſed of the ſaid Tenements, with the Appurtenances, after whoſe Deceaſe the ſaid *Fitz-William* proved the ſaid Will in due Form, and undertook the Charge of the Execution thereof, and enter'd into the ſaid Premiſſes, with the Appurtenances, and was thereof poſſeſſed for the Reſidue of the ſaid Term of Years then to come and unexpired, and being ſo poſſeſſed thereof, afterwards, to wit, on the 20th Day of *May*, in the 18th Year aforeſaid, he the ſaid *Fitz William* at *Bodenham* aforeſaid conſented, and then and there declared and publiſhed ſuch his Conſent to the ſeveral Bequeſts deviſed in the Manner aforeſaid, *&c.*

And an Aſſent of the Executor to the Deviſe.

2 Saund. 278.

(4.) And

The Manner of pleading the Deviſe of a Reverſion to one for Life, and then to his 1ſt, 2d, 3d, 4th, &c. Sons in Tail; and for Want of ſuch Iſſue, to the Daughters; and for Want of ſuch Iſſue, to W. in Fee.

(4.) ——— And the ſaid *John* being ſo ſeiſed thereof, he the ſaid *John* afterwards, to wit, on the 1ſt Day of *December* in the Year of our Lord 1651, made his Laſt Will and Teſtament in Writing, at *London* aforeſaid, in the ſaid Pariſh and Ward; and by the ſame Laſt Will and Teſtament, amongſt other Things, deviſed and bequeathed the ſaid Reverſion of the Meſſuage aforeſaid, with the Appurtenances, to *John Hilliard*, only Son of the ſaid *John Hilliard* the Teſtator, for and during the Term of his natural Life; and after the Deceaſe of the ſaid *John Hilliard* the Son, then to the Uſe of the firſt Son of the Body of the ſaid *John Hilliard* the Son, lawfully to be begotten, and the Heirs of the Body of ſuch firſt Son lawfully to be begotten; and for Default of ſuch Iſſue, then to the Uſe of the ſecond Son of the Body of the ſaid *John Hilliard* the Son, lawfully to be begotten, and the Heirs of the Body of ſuch ſecond Son lawfully to be begotten; and for Default of ſuch Iſſue, then to the Uſe of the third, fourth, fifth, ſixth, ſeventh, eighth, ninth and tenth, and every other Son and Sons of the Body of the ſaid *John Hilliard* the Son, ſucceſſively one after the other, as they ſhould be in Seniority of Age, and Priority of Birth reſpectively, and the reſpective Heirs of the Body of ſuch Son and Sons, and the Heirs of their Body lawfully to be begotten; the Elder of every ſuch Son and Sons, and the Heirs of his Body lawfully to be begotten, always to be preferred before the Younger and the Heirs of his Body; and for Want of ſuch Iſſue, then to the Uſe of all and every Daughter and Daughters of the Body of the ſaid *John* the Son lawfully to be begotten, and the Heirs of their Bodies lawfully to be begotten; and for Want of ſuch Iſſue, then the ſaid *John Hilliard* the Father, by his ſaid Laſt Will and Teſtament gave and deviſed the ſaid Reverſion, with the Appurtenances, to the ſaid *William*, his Heirs and Aſſigns for ever; and afterwards, to wit, on the 3d Day of *February* in the

the Year of our Lord 1658. aforeſaid, the ſaid *John Hilliard*, the Father, died at *London* aforeſaid, in the ſaid Pariſh and Ward, ſeiſed of ſuch his Eſtate of and in the ſaid Reverſion of the Meſſuage aforeſaid, with the Appurtenances; after whoſe Deceaſe the ſaid *John Hilliard* the Son was ſeiſed of the ſaid Reverſion of the Meſſuage aforeſaid, with the Appurtenances, in his Demeſne as of a Freehold, for the Term of his natural Life, the Remainder thereof, after the Deceaſe of the ſaid *John Hilliard*, belonging, as above limited in the Manner aforeſaid; and the ſaid *John Hilliard* the Son, afterwards, to wit, [*ſuch a Day and Year*] died at *London* aforeſaid, in the ſaid Pariſh and Ward, ſeiſed of ſuch his Eſtate therein, without any Iſſue of his Body lawfully begotten; after whoſe Deceaſe the ſaid *William* became, and now is ſeiſed of the ſaid Reverſion of the Meſſuage aforeſaid, with the Appurtenances, in his Demeſne as of Fee, by Virtue of the Laſt Will and Teſtament aforeſaid, *&c.*

Setting forth, that the Tenant for Life died without Iſſue, and the Lands by the Deviſe were veſted by way of Remainder in Fee in W. &c.

2 Saund. 236.

Dignity.

(1.) AND the ſaid Biſhop and *N. M.* by *J. M.* their Attorney, come and defend the Force and Injury; and the ſaid Biſhop prays Judgment of the aforeſaid Writ, becauſe he ſaith, that it appears by the ſaid Writ, that the aforeſaid *F.* now the Wife of the ſaid *A. S.* is named in the ſaid Writ, the Lady Dutcheſs of *Suffolk*; whereas by the Law of the Land of this Kingdom of *Great Britain*, ſhe the ſaid *F.* by her ſaid Marriage, had, ſolemniz'd and conſummated between her and the ſaid *A. S.* loſt the Name of her Dignity of Lady Dutcheſs of *Suffolk*, and ought only to have been named *F.* the Wife of the ſaid *A. S.*

Where two plead ſeverally, that one of the Plaintiff's hath an Addition of Dutcheſs in the Writ; whereas ſhe loſt her Dignity by Marrying a Perſon of an inferiour Degree.

1 Brown 3.

A. S. and this he is ready to verify: Wherefore, inaſmuch as the ſaid *F.* is named in the ſaid Writ Lady Dutcheſs of *Suffolk*, the ſaid Biſhop prays Judgment of the ſaid Writ, and that the ſame may be quaſhed: And the ſaid *N. M.* likewiſe prays Judgment of the ſaid Writ, becauſe he likewiſe ſaith, that it appears by the ſaid Writ, that the ſaid *F.* Wife of the ſaid *A. S.* is therein named Lady Dutcheſs of *Suffolk*; whereas by the Law of this Kingdom of *Great Britain*, the ſaid *F.* by reaſon of the ſaid Marriage had and ſolemniſed between the ſaid *A. S.* and her, totally loſt and deprived herſelf of the Name of her Dignity of Lady Dutcheſs of *Suffolk*, and ought not to be named in the ſame Writ Lady Dutcheſs of *Suffolk*, but ought only to have been named *F.* the Wife of the ſaid *A. S.* Wherefore inaſmuch as the ſaid *F.* is named in the ſaid Writ, Lady Dutcheſs of *Suffolk*, the ſaid *N. M.* likewiſe prays Judgment of the ſaid Writ, and that it may be quaſhed.

Diminution.

Writ of Diminution to the Chief Juſtice of the Com. Pleas. Lilly's Entr. 565.

(1.) GEORGE the Second, *&c.* To our Truſty and Well-beloved Sir *O. B.* Knt. and Bart. our Chief Juſtice of our Court of Common Pleas; whereas we have lately received Information by the Complaint of *T. A.* that manifeſt Error hath happened in the Record and Proceſs, and alſo in giving Judgment of the Plaint, which was in our Court before you and your Brethren then our Juſtices of our Court of Common Pleas by our Writ between *F. B. jun.* Plaintiff, and the ſaid *T. A.* in a Plea [or *Action*] for a Breach of Covenant, to the great Damage of the ſaid *T.* and we have cauſed the ſaid Record and Proceſs to be brought before us to correct ſuch Errors, and the ſaid *T. A.* appearing in our Court

before us, hath alledged, that the Record returned before us is not complete, inaſmuch as you have not certified the Record of the Continuances of the Proceſs in the ſaid Plea [or *Action*] upon the Original Writ between the ſaid Parties in the ſaid Plea [or *Action*] from the Octaves of the Purification of the bleſſed Virgin *Mary* in the 15th Year of our Reign, until *Eaſter-Term*, to wit, in one Month from the Feaſt of *Eaſter*, in the ſaid 15th Year of our Reign, and of the Declaration of the ſaid *F. B.* exhibited in our ſaid Court of Common Pleas of the ſame *Eaſter-Term* againſt the ſaid *T. A.* in the ſaid Plea [or *Action*] and of the Imparlance thereupon granted by the ſaid *F. B.* to the ſaid *T. A.* ſtill remaining of Record in our ſame Court of Common Pleas of the ſaid ſeveral and reſpective Terms under your Cuſtody; and the ſaid *F.* hath pray'd our Writ of *Certiorari* to be directed to you, to certify the full Truth thereof, and 'tis granted to him: Therefore we command you, that you ſearch the Rolls of the ſaid ſeveral Terms remaining in your Cuſtody, and if it be ſo, that then you do forthwith certify to us wherever we ſhall then be in *England*, the Record of the Continuances of the Proceſs upon the Original Writ between the ſaid Parties in the ſaid Plea [or *Action*] from the Octaves of the Purification of the Bleſſed Virgin *Mary*, in the ſaid 15th Year of our Reign until *Eaſter-Term*, to wit, in one Month from the Feaſt of *Eaſter* in the ſame *Eaſter-Term*, in the ſaid 15th Year of our Reign; and alſo the Record of the ſaid Declaration of the ſaid *F. B.* exhibited before you, againſt the ſaid *T. A.* in the ſaid Plea [or *Action*] in our ſaid Court of Common Pleas in the ſame *Eaſter-Term*, and of the ſaid Imparlance to the ſaid Declaration granted to the ſaid *T. A.* together with this Writ. Witneſs, &c.

To certify the Continuance and Imparlance into the King's Bench.

Diſcent.

The Manner of pleading a Diſcent to a Son and Heir from his Father in Fee. Theſ. Brev. 209.

(1.) ——— BY Virtue of which Feoffment the ſaid *E. G.* became ſeiſed of the Tenements aforeſaid, with the Appurtenances, in his Demeſne as of Fee; and being ſo ſeiſed, he the ſaid *E. G.* afterwards, to wit, on the 10th Day of *February* [*in ſuch a Year*] died at *D.* aforeſaid in the County aforeſaid, ſeiſed of ſuch his Eſtate therein, after whoſe Deceaſe the ſaid Tenements, with the Appurtenances, deſcended to *J. G.* Son and Heir of the ſaid *E. G.* which ſaid *J.* afterwards, to wit, [*ſuch a Day and Year*] entered into the ſaid Tenements, with the Appurtenances, and was thereof ſeiſed in his Demeſne as of Fee, and being ſo ſeiſed, *&c.*

A Diſcent of Copyhold Lands to two Daughters, there being not a Son, and a Seiſin in Right of one of them as a Wife. Theſ. Brev. 127.

(2.) ——— By Virtue of which Grant the ſaid *S. R.* entered into the ſaid Dwelling-houſe, with the Appurtenances, and was thereof ſeiſed in his Demeſne as of Fee, at the Will of the Lord, according to the Cuſtom of the Manor aforeſaid, and being ſo ſeiſed thereof, he the ſaid *S. R.* afterwards and before the ſaid Time, when, *&c.* to wit, [*ſuch a Day and Year*] at the Manor aforeſaid, died ſeiſed of ſuch his Eſtate therein, of and in the ſaid Dwelling-houſe, and at the Time of his Death had no Son, but had only two Daughters, to wit, *M.* the Wife of *J. S.* his eldeſt Daughter, and *L.* the Wife of *J. P.* his youngeſt Daughter, whereby the ſaid Dwelling-houſe, *in which*, &c. according to the Cuſtom aforeſaid, deſcended to the ſaid *L.* as youngeſt Daughter and Heir of the ſaid *S. R.* for which Reaſon the ſaid *J.* and *L.* his Wife, afterwards and before the ſaid Time, when, *&c.* entered into the ſaid Dwelling-houſe, in which, *&c.* and before and alſo at the ſaid Time when, *&c.* were and now are ſeiſed thereof in their Demeſne as of Fee, at the Will

of the Lord according to the Cuſtom of the Manor aforeſaid in Right of the ſaid *L.* and being ſo ſeiſed thereof, &c.

Diſclaimer.

(1.) ——— WHEN, &c. and pleads, that he doth not, nor did at the Time when the ſaid Treſpaſs is above ſuppoſed to have been committed, claim any Right or Title in or to the Cloſe aforeſaid, in which, &c. but totally diſclaims all Title in the ſaid Cloſe, in which, &c. and that before the reſt of the ſaid Treſpaſs is ſuppoſed to have been committed, to wit, [*ſuch a Day and Year*] at *C.* aforeſaid, he the ſaid *(Defendant)* offered to pay the ſaid *(Plaintiff)* 2 *s.* 6 *d.* of lawful Money of *Great Britain*, as a Satisfaction for the reſt of the Treſpaſs aforeſaid, which 2 *s.* 6 *d.* were ſufficient Amends for the reſt of the Treſpaſs aforeſaid above ſuppoſed to have been committed, which 2 *s.* 6 *d.* the ſaid *(Plaintiff)* then and there refuſed to receive of the ſaid *(Defendant)*; and this he his ready to verify: Wherefore he prays Judgment, whether the ſaid *(Plaintiff)* ought to have or maintain his ſaid Action thereof againſt him, &c.

The Manner of pleading a **Diſclaimer** in **Treſpaſs**, and a Tender of Amends. Pl. Gen. 423.

(2.) At which Day appeared as well the ſaid *R.* as the ſaid *W. J.* and *J.* his Wife, by their Attornies aforeſaid, and the ſaid *J. C.* and *M.* his Wife, *J. G.* and *J.* his Wife, and *T. T.* being ſummoned, &c. by the ſaid *R. B.* their Attorney, likewiſe appeared, and *gratis* joined themſelves in Aid of the ſaid *R.* in the Action aforeſaid; and thereupon as well the ſaid *R.* as the ſaid *J. C. M. J. G.* and *J.* plead, that the ſaid *W. J. H.* and *J. W.* ought not to avow the Taking of the Cattle aforeſaid, in the ſaid Places where-

A Joinder in Aid by a Summons to have Aid, and two of the Perſons called to give Aid plead hors de ſon Fee, and the other Perſon called in to give Aid diſclaims.

Pl. Gen. 512. in, &c. to be juſt for the Reaſon above alledged, becauſe they ſay, that that ſame Place is, and at the Time of the Taking aforeſaid was out of the Fee and Demeſne of the ſaid preſent Abbeſs; and this they are ready to verify: Wherefore the ſaid *W. J. H.* and *J.* his Wife above avowing the Taking of the ſaid Cattle, pray Judgment, and that Damages for the Reaſon aforeſaid may be adjudged to the ſaid *R. &c.* and the ſaid *R.* and the aforeſaid *T.* who join themſelves in Aid, &c. not acknowledging any Thing above ſpecify'd in the ſaid Cognizance, for Plea ſay, that the ſaid *W. J. H.* and *J.* his Wife, ought not to acknowledge the Taking of the ſaid Cattle in the ſaid Place wherein, &c. to be juſt, for the Reaſon above alledged, becauſe they ſay, that the ſaid *T.* doth not, nor did he at the ſaid Time when, &c. hold of the ſaid Abbeſs the Tenements aforeſaid, with the Appurtenances, but totally diſavows and diſclaims to hold the ſame of the ſaid Abbeſs: Wherefore he prays Judgment and his Damages occaſioned by the Taking and unjuſtly Detaining of the ſaid Cattle, to be adjudged to the ſaid *R. &c.*

A Rejoinder, that the Place fuit infra Feodum, and an Iſſue thereupon, and a Stay of the Taxation of the Coſts in the Diſclaimer till the Iſſue be tried.

(3.) And the ſaid *W. J. H.* and *J.* his Wife, plead, that the ſaid Place, in which, &c. is and at the ſaid Time when, &c. was within and not out of the Fee and Demeſne of the ſaid Abbeſs in ſuch Manner as they the ſaid *W. J. H.* and *J.* his Wife, have above ſuppoſed by their Cognizance aforeſaid, and thereof they put themſelves upon the Country, and the ſaid *R.* and the ſaid *J. C. M. J. G.* and *J.* who join themſelves in Aid, &c. do likewiſe the ſame; and becauſe the ſaid *W. J. H.* and *J.* his Wife, have pleaded in the ſaid Plea, with the ſaid *R.* and the ſaid *J. C. M. J. G.* and *J.* to Iſſue, to be tried by the Country between the ſaid Parties; therefore as to the having of a Writ of Enquiry of Damages for the ſaid *R.* againſt the ſaid *W. J. H.* and *J. L.* becauſe that the ſaid *R.* and the ſaid *T.* who joins himſelf, &c. diſavow and diſclaim to hold the Tenements

Tenements aforeſaid, with the Appurtenances, of the ſaid Abbeſs, for which Cauſe the ſaid *R.* ought to have his Damages againſt the ſaid *W. J. H.* and *J. W.* let the Taxation of thoſe Damages ceaſe, till the Iſſue aforeſaid between the ſaid *R.* and the ſaid *J. C. M. J. G.* and *J.* who have joined themſelves in Aid, *&c.* and the ſaid *W. J. H.* and *J.* his Wife, be determined; and becauſe it is neceſſary, that there ſhould be but one Taxation of the Damages for the whole Taking of the Cattle aforeſaid, if Judgment ſhall happen to be given for the ſaid *R.* and the ſaid *J. C. E. J. G.* and *J.* againſt the ſaid *W. J. H.* and *J.* his Wife: Therefore the Sheriff is commanded, that he cauſe twelve good and lawful Men, *&c.* Pl. Gen. 513, 514.

(4.) And the ſaid Plaintiff not confeſſing any Thing before alledged by the ſaid Defendant to be true, pleads, that the ſaid Defendant ought not to avow the Taking of the ſaid Cattle in the Place where, *&c.* to be juſt, becauſe the ſaid Plaintiff ſaith, that he doth not hold the ſaid Tenements, with the Appurtenances, of the ſaid Defendant, but utterly diſavows and diſclaims to hold the ſame of the ſaid Defendant; wherefore he prays Judgment and his Damages by reaſon of the Taking and unjuſtly Detaining of the ſaid Cattle; therefore the Sheriff is commanded by the Oaths of honeſt and lawful Men of his County diligently to enquire what Damages the ſaid Plaintiff hath ſuſtained as well by the Taking and Detaining of the ſaid Cattle, as for his Expences and Coſts, *&c.* and ſuch Inquiſition, *&c.* he make appear [or *return*] to us under his Seal and the Seals of thoſe, *&c.*

A Diſclaimer in Replevin and Writ of Inquiry awarded. Mo. Intr. 306.

Diſcontinuance.

B. R.

Diſcontinuance of a Suit by Bill. Trin. 13 Ja. Rot. 691.

(1.) AFterwards, to wit, *Saturday* next after fifteen Days of St. *Martin*, in the ſaid 8th Year of his ſaid Majeſty's Reign, the ſaid *B.* came before his ſaid Majeſty at *Weſtminſter*, by his ſaid Attorney, and the ſaid *A.* did not then and there proſecute his ſaid Bill againſt the ſaid *B.* with Effect, but voluntarily permitted his Suit to be diſcontinued; therefore afterwards, to wit, on the ſame Day, by the Diſcretion of his ſaid Majeſty's Juſtices of this Court, before the King himſelf 53 *s.* and 4 *d.* were adjudged to the ſaid *B.* for his Expences and Coſts by him ſuſtained about his Defence in this Cauſe, according to the Form of the Statute in that Caſe made and provided; and be the ſaid *A.* amerced, and the ſaid *B.* may have an Execution thereon, *&c.*

The Diſcontinuance of an Iſſue.

(2.) Therefore let a Jury appear thereupon before our Sovereign Lord the King at *Weſtminſter* on *Wedneſday* next after three Weeks of the *Holy Trinity*, and who neither, *&c.* to recognize, *&c.* Becauſe as well, *&c.* the ſame Day is given to the ſaid Parties to be there, *&c.* Afterwards, on *Friday* next after the Morrow of the *Holy Trinity* then next enſuing before our Sovereign Lord the King at *Weſtminſter*, came the ſaid *T. F.* by his ſaid Attorney; and the ſaid *S.* did not then and there, *&c.* proſecute his ſaid Bill againſt the ſaid *T.* with Effect, but ſuffered the ſaid Suit to be diſcontiued for Want of Proſecution: Therefore, *&c.*

The Entry of a Diſcontinuance on a Writ of Error.

(3.) At which Day came the ſaid *(Defendant)* before our Sovereign Lord the King at *Weſtminſter* in his own Perſon, and the ſaid *(Plaintiff)* at that Day being ſolemnly required did not appear; therefore it is conſidered, that his Pledges aforeſaid

ſaid be taken; and for that by the Default of the ſaid *W. L. (the Plaintiff)* the Suit aforeſaid was diſcontinued; therefore at preſent nothing is to be done thereon.

After the ſame Day is given to the Parties to be there, *&c. you go on and ſay:*

(4.) Afterwards, to wit, on *Friday* next after the Morrow of the *Holy Trinity* from thence next following, came the ſaid *T. T.* by his ſaid Attorney, before her ſaid Majeſty at *Weſtminſter*, and the ſaid *S. S.* did not then and there proſecute his ſaid Bill againſt the ſaid *T.* with Effect, but hath permitted his ſaid Suit to be diſcontinued for Want of Proſecution: Therefore, *&c.*

Diſcontinuance after Iſſue joined. Lilly's Entr. 489.

Diſſeiſin.

(1). AND the ſaid *W.* by *J. S.* his Attorney, comes and defends the Force and Injury, when, *&c.* and pleads, that the ſaid *N.* and *J.* ought not to have or maintain their ſaid Action againſt him, becauſe he ſaith, that long before the ſaid *N.* and *J.* had any Thing in the ſaid Meſſuage, with the Appurtenances, and before the Time when the ſaid Entry is ſuppoſed to have been made one *B. T.* of *C.* aforeſaid was ſeiſed of the ſaid Meſſuage, with the Appurtenances, in his Demeſne as of Fee, and being ſo ſeiſed thereof before the ſaid Time when, *&c.* enfeoffed the ſaid *W. M.* and one *J. C.* and *R. M.* of the ſaid Meſſuage, with the Appurtenances, to hold to them and their Heirs for ever, by Virtue of which Feoffment, they the ſaid *W. J.* and *R.* became ſeiſed thereof in their Demeſne as of Fee, till one *R. K.* before the ſaid Time when, *&c.* unjuſtly, and

To an Action upon the Stat. of R. 2. for a Forcible Entry; the Defendant claims a prior Title, and ſhews a Conveyance to him by Feoffment; and then ſhews a Diſſeiſin made by him who enfeoffed the Plaintiff. Pl. Gen. 78.

and without any Judgment diſſeiſed them, whereby the ſaid *R.* became ſeiſed of the ſaid Meſſuage, with the Appurtenances, in his Demeſne as of Fee by Diſſeiſin, and being ſo ſeiſed by Diſſeiſin before the ſaid Time when, &c. enfeoffed the ſaid *N.* and *J.* of the ſaid Meſſuage, with the Appurtenances, to hold to the ſaid *N.* and *J.* and their Heirs for ever, by Virtue of which Feoffment, they the ſaid *N.* and *J.* were ſeiſed thereof in their Demeſne as of Fee, upon which Poſſeſſion of the ſaid *N.* and *J.* he the ſaid *W. M.* afterwards, to wit, at the ſaid Time when, &c. re-enter'd into the ſaid Meſſuage, with the Appurtenances, as it was lawful for him to do; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *N.* and *J.* ought to have or maintain his ſaid Action againſt him, &c.

The Plaintiffs make a Title by Feoffment of Ceſtui que uſe, and Traverſe the Diſſeiſin alledged in Bar.

(2.) And the ſaid *N.* and *J.* reply, that they ought not to be precluded from having and maintaining their ſaid Action againſt the ſaid *W.* by any Thing above alledged by him in his Plea, becauſe they ſay, that before the ſaid Time of the Entry made as aforeſaid, the ſaid *W. F.* was ſeiſed of the ſaid Meſſuage, with the Appurtenances, in his Demeſne as of Fee, to the Uſe of one *S. R.* and his Heirs for ever; and he the ſaid *W.* being ſo ſeiſed thereof to ſuch Uſe, he the ſaid *S.* before the ſaid Time when, &c. died after whoſe Deceaſe the Uſe of the ſaid Meſſuage, with the Appurtenances, deſcended to the ſaid *R. L.* as Son and Heir of the ſaid *S.* whereby the ſaid *W.* was ſeiſed of the ſaid Meſſuage, with the Appurtenances, in his Demeſne as of Fee, to the Uſe of the ſaid *R.* and his Heirs, and the ſaid *W. F.* being ſo ſeiſed to ſuch Uſe, he the ſaid *R.* before the ſaid Time when, &c. enfeoffed the ſaid *N.* and *J.* of the ſaid Meſſuage, with the Appurtenances, to hold to them and their Heirs for ever, by virtue of which Feoffment the ſaid *N.* and *J.* became ſeiſed thereof in their Demeſne as of Fee, till the ſaid *W. M.* afterwards, the Day and Year above

above mentioned, enter'd into the ſaid Meſſuage of the ſaid *N.* and *J.* with the Appurtenances, in *C.* aforeſaid, in which an Entry by Law was not given to the ſaid *W.* againſt the Form of the Statute aforeſaid, as the ſaid *N.* and *J.* above complains againſt him, **Without that**, that the ſaid *R. K.* diſſeiſed the ſaid *W.* and *P.* of the Meſſuage aforeſaid, with the Appurtenances, as the ſaid *W.* hath above alledged; and this he is ready to verify, *&c.*

A Reſoinder by Protestation taking an Iſſue upon the Traverſe.

(3.) And the ſaid *W.* **Proteſting**, that the ſaid *W.* was never ſeiſed of the ſaid Meſſuage to the Uſe of the ſaid *S.* and his Heirs, as the ſaid *N.* and *J.* have above alledged, **For Plea** they plead, as before, that the ſaid *R. K.* diſſeiſed the ſaid *W.* and *P.* of the ſaid Meſſuage, with the Appurtenances, as the ſaid *W.* hath above alledged; and thereof he puts himſelf upon the Country, *&c.*

The Manner of Pleading a Seiſin in Fee, and a Diſſeiſin thereon. 1 Saund. 56.

(4.) And the ſaid *George* replies, that he ought not to be precluded from having his ſaid Action againſt the ſaid *David*, by any Thing above alledged in his Plea, becauſe **Proteſting**, that the ſaid *David* hath not performed and fulfilled or kept any of the Articles, Covenants, Promiſes, Grants or Agreements aforeſaid, on the Part of the ſaid *David* to be obſerved, performed, fulfilled and kept, according to the Form and Effect of the ſaid Indenture of Aſſignment, as the ſaid *David* hath above in Pleading alledged; **For Plea** the ſaid *George* ſaith, that before the Making of the ſaid Indenture by the ſaid *David* now brought into this Court, one *Thomas Townley*, Gentleman, was ſeiſed of the ſaid Meſſuage, with the Appurtenances, commonly called or known by the Name or Sign of the *White Lion* above mentioned in the ſaid Indenture by the ſaid *David* now brought into this Court, in his Demeſne as of Fee, and being ſo ſeiſed thereof afterwards, and before the Making of the ſaid Indenture, to wit, on the 20th Day of *January*,

in the 14th Year of the Reign of his preſent Majeſty, the ſaid *Richard Pagitt* above named in the ſaid Indenture now brought into this Court, enter'd into the ſaid Meſſuage, with the Appurtenances, upon the Seiſin thereof of the ſaid *Thomas Townly*, and expelled and diſſeiſed him, thereof, whereby the ſaid *Richard Pagitt* became ſeiſed of the ſaid Meſſuage, with the Appurtenances, in his Demeſne as of Fee by Diſſeiſin, and being ſo ſeiſed thereof by Diſſeiſin, the ſaid *Richard Pagitt* afterwards, and before the Making of the ſaid Indenture now brought into this Court, that is to ſay, upon the ſaid 20th Day of *January*, in the 14th Year aforeſaid, at *London* aforeſaid, in the ſaid Pariſh and Ward, by his Indenture ſealed with his Seal, then and there made and above mentioned in the ſaid Indenture now brought into this Court, demiſed, granted and to Farm let, *&c.*

Diſtringas.

A **Diſtringas** for Chattels or their Value.

(1.) GEORGE the Second, *&c.* To the Sheriffs of *London*, Greeting: We command you, that ye diſtrain *W. T.* late of *S.* in the County of *Huntington* Eſq; by all his Lands and Chattels in your Bailiwick, ſo that neither he or any Perſon for him meddle therewith, till ye have another Precept from us therein, and that ye anſwer to us for the Profits thereof, in order, that he render to *J. B.* a Mare which the ſaid *T.* hath recovered in our Court before our Juſtices at *Weſtminſter* againſt him, or 5 *l.* for the Value thereof, if the ſaid *W.* cannot reſtore her to the ſaid *T.* whereof he is convicted [or *whereupon there is a Judgment*]; and in what Manner ye ſhall execute this our Precept, do ye make appear to our Juſtices at *Weſtminſter* in three Weeks from the Day

Day of the *Holy Trinity*; and have you there this Writ. Witneſs, &c.

A Diſtringas againſt a Bailiff upon a Capi Corpus returned upon an Attachment of Privilege directed to and returned by the late Sheriff.

(2.) George the Second, *&c.* To the Sheriff of *Suffolk*, Greeting: We command you, that you diſtrain *R. M.* Eſq; Chief Steward of the Liberty of *Bury St. Edmunds* in your County, by all his Lands and Chattels in your Bailiwick, ſo that [*as above to the Words*] in order that he may have before our Juſtices at *Weſtminſter*, on *Monday* next after fifteen Days of St. *Hillary*, the Body of *W. A.* whom he, by Virtue of our Writ directed to *A. P.* Eſq; late Sheriff of your County, your Predeceſſor, had taken and detained in his Cuſtody, as our late Sheriff hath returned to our Juſtices at *Weſtminſter*, on *Thurſday* next after the *Octaves* of St. *Martin* laſt paſt, * to anſwer to *S. M.* Gent. an Attorney of our Court of Common Pleas, according to the Liberties and Privileges of that Court for ſuch Attornies and other Officers of the ſame Court, Time out of Mind therein uſed and approved of, in Action of Treſpaſs on the Caſe, and in what Manner, *&c.* [*as in the former.*]

The Form of the Entry of this Writ.

(3.) *Suffolk*, ff. The Sheriff was commanded, that he ſhould attach *W. W.* and *W. A.* ſo that he might have them here at this Day, to wit, on *Thurſday* next after the Octaves of St. *Martin*, to anſwer ſeparately to *S. M.* Gent. an Attorney of this his Majeſty's Court of Common Pleas at *Weſtminſter*, according to the Liberties and Privileges of this Court aforeſaid, for ſuch Attornies and other Officers thereof, Time out of Mind uſed and approved of therein in an Action of Treſpaſs upon the Caſe; and now here at this Day comes the ſaid *Stephen* in his own Perſon, and tenders himſelf the fourth Day againſt the ſaid *W.* and *W.* in the Action aforeſaid, and they do not appear, and the Sheriff, that is to ſay, *A. P.* Eſq; now returns, that in order to an Execution of the ſaid Writ to him directed, he made a Mandate to *R. M.* Eſq; Chief Steward of the Liberty of *Bury St. Edmunds*

munds in the ſaid County, which Steward had the Execution and Returns [or *the Power of Executing and Returning*] of all Writs within the ſaid Liberty, within which Liberty he the ſaid Sheriff could not execute the ſame, which ſaid Steward had given an Anſwer to the ſaid Sheriff, that he had taken the Body of the ſaid *W. A.* and that he the ſaid Sheriff hath him here ready at this Day, as by the ſaid Writ he was commanded; and the ſaid Sheriff further returns, that the ſaid *W. W.* was not to be found in his Bailiwick; and therefore the Sheriff is commanded, that he diſtrain the ſaid Steward by all his Lands, &c. and that he anſwer for the Profits, &c. ſo that he have here on *Monday* next after fifteen Days of St. *Hillary*, the Body of the ſaid *W. A.* whom, &c. to anſwer to the ſaid *S.* in the Manner aforeſaid; and in what manner, &c. the Sheriff do make appear at the Time aforeſaid, &c.

A Diſtringas to the Bailiff of a Liberty upon a Cepi Corpus returned upon a Ca' Sa'.

(4.) *As in the former* Diſtringas, Pl. 2. *to the* Aſteriſk, *and then inſtead of* to anſwer, &c. *you ſay*, to make Satisfaction to *J. D.* as well for a Debt of 200 *l.* which *S. M.* hath lately recovered in our Court of Common Pleas before our Juſtices at *Weſtminſter* againſt him, as alſo for 60 *s.* which were adjudged in our ſame Court to the ſaid *S.* for his Damages by reaſon of Detaining that Debt, whereof he is convicted, and in what Manner, &c. [*as in the former.*]

A Diſtringas to the late Sheriff upon the Return of a Lat' Cepi Corpus. Lilly's Entr. 568.

(5.) George the Second, &c. To the Sheriff of *Cambridge*, Greeting: We command you, that you diſtrain *W. E.* Eſq; late Sheriff of your County, by all his Lands and Chattels in your Bailiwick, ſo that he nor any one for him may intermeddle therewith, until you receive another Writ thereof from us; and that you anſwer to us for the Profits thereof, ſo that he may have the Body of *T. D.* (by him taken and detained in his Cuſtody in our Priſon, as he hath charged himſelf before us, by his Return heretofore made) before

before us at *Weſtminſter*, on next after to anſwer to *H. B.* of a Plea of Treſpaſs, and alſo the Bill of him the ſaid *H.* to be exhibited againſt the ſaid *T. D.* for 30 *l.* upon Promiſe [or *Promiſes*] according to the Cuſtom of our Court before us: And have you there this Writ at the ſame Time. Witneſs, &c.

(6.) George, &c. To the Sheriff of *S.* Greeting: We command you, that you diſtrain *H. Y.* Eſq; late Sheriff of your County, by all his Lands and Chattels in your Bailiwick, ſo that neither he nor any one for him intermeddle therewith until you receive from us another Precept for that Purpoſe, and that you anſwer the Iſſues thereof to us, ſo that he may return our Writ of *Latitat* (iſſued out of our Court before us at *Weſtminſter*, and deliver'd to the ſaid *H. Y.* then Sheriff of your ſaid County againſt *R. L.* at the Suit of *E. S.* in an Action of Treſpaſs, and alſo the Bill of him the ſaid *E.* againſt him the ſaid *R.* for 45 *l.* upon Promiſe exhibited according to the Cuſtom of our Court before us, returnable before us at *Weſtminſter* on next after) to us in our ſaid Court before us at *Weſtminſter*, on next after And have you there this Writ at the ſame Time. Witneſs, &c.

Diſtringas againſt the late Sheriff to return a Writ of Latitat. Lilly's Entr. 569.

(7.) George, &c. To the Sheriff of *Norfolk*, Greeting: We command you, that you diſtrain *P. M.* late Sheriff of your County, by all his Lands and Chattels in your Bailiwick, ſo that neither he nor any other Perſon for him meddle therewith, till you have another Precept from us for that Purpoſe, and that you anſwer to us for the Profits thereof, ſo that he have the Body of *E. G.* (taken by him, as by his Return lately ſent into our Court before us he hath charged himſelf) before us at *Weſtminſter* [*ſuch a Return*] to anſwer to *T. H.* in an Action of Treſpaſs: And have you there at the ſame Time this Writ. Witneſs, &c.

A Diſtringas to diſtrain the late Sheriff upon a Cepi Corpus returned.

(8.) The

The Entry of a Diſtringas againſt the Bailiff of the Liberty of Weſtminſter.

(8.) The Sheriff is commanded, that he diſtrain *A. H.* Gent. Bailiff of the Liberty of the Dean and Chapter of the Collegiate Church of *St. Peter, Weſtminſter*, in his County, by all his Lands, &c. and that of the Iſſues, &c. ſo that he have before our Sovereign Lord the King at *Weſtminſter* [*ſuch a Return*] the Body of *R. F.* by him taken and detained in his ſaid Majeſty's Priſon under his Cuſtody as *A. B.* and *C. D.* late Sheriff of the County of *Middleſex*, by the Return ſent into this Court of our ſaid Sovereign Lord the King before the King himſelf, have charged the ſaid *A. H.* therewith, to anſwer to *T. F.* in an Action of Treſpaſs: And that he have there at the ſame Time that Precept, &c.

A Diſtringas againſt the Sheriff to have the Body, tho' ſick, in Priſon upon a Cepi Corpus. Theſ. Brev. 19.

(9.) George the Second, &c. To the Sheriff of *Kent*, Greeting: We command you, that you diſtrain *J. B.* late Sheriff of your County by all his Lands and Chattels in your Bailiwick, ſo that neither he, nor any other Perſon for him meddle therewith, till you have another Precept from us for that Purpoſe; and that you anſwer to us for the Iſſues and Profits thereof, ſo that he have before us at *Weſtminſter*, on *Thurſday* next after fifteen Days of *Eaſter*, the Body of *R. S.* by him taken and detained in our Priſon under his Cuſtody, (though he be ſick,) as by his Return ſent to us he hath lately charged himſelf with, to make Satisfaction to *J. M.* for 40 *l.* for his Damages, which he ſuſtained as well by reaſon of a Treſpaſs done to the ſaid *J. M.* by the ſaid *R. S.* as for his Expences and Coſts laid out by him about his Suit in that Behalf, whereof he is convicted, as it appears to us of Record; and to hear his Judgment for his many Defaults. Witneſs, &c.

(10.) George

(10.) George the Second, &c. To the Sheriff of *L.* Greeting: We command you, that you diſtrain *R. M.* and *C. D.* late Sheriffs of the ſaid City by all their Lands and Chattels in your Bailiwick, ſo that neither they or either of them, or any Perſon for them or either of them, meddle therewith, until you have another Precept from us for that Purpoſe, and that you anſwer to us for the Profits thereof, ſo that they do expoſe to Sale the Goods and Chattels which were of *J. D.* in your Bailiwick, to the Value of 40 *l.* which lately in our Court before us were adjudged to *E. G.* for his Damages, which he had ſuſtained as well by reaſon of the Non-performance of a Promiſe and Undertaking lately made by the ſaid *E.* to the ſaid *J.* as alſo for his Expences and Coſts laid out by him about his Suit in this Caſe, whereof he is convicted, as it appears to us of Record; which Goods and Chattels they took, by Virtue of our Writ, and are remaining in their Hands unſold for Want of Buyers, as the ſaid late Sheriffs have returned to us in our Court before us at *Weſtminſter* at the Day of the Return of the Writ aforeſaid; and have you thoſe Monies before us at *Weſtminſter* [*ſuch a Day*] to render to the ſaid *E.* for the Damages aforeſaid: And have you there, &c.

A Diſtringas againſt the late Sheriff upon a Fi' Fa' for not ſelling the Goods.

(11.) George the Second, &c. To the Sheriffs of *D.* Greeting: We command you, that you omit not by reaſon of any Liberty in your County, but that you diſtrain the Mayor and Citizens of *Rocheſter*, by all their Lands and Chattels in your Bailiwick, ſo that neither they or either of them meddle therewith, until you have another Precept from us for that Purpoſe; and that you anſwer to us for the Profits thereof, ſo that they expoſe to Sale thoſe Goods and Chattels, which were of *T. J.* to the Value of 5 *l.* which *T. F.* hath lately recovered in our Court before us againſt the ſaid *T. J.* as well by reaſon of a Treſpaſs upon the Caſe lately committed againſt the ſaid *T. F.*

A Diſtringas and Venditioni Exponas upon a Return made by the Mayor and Citizens of Rocheſter, that they had taken Goods to the Value of 10 l. and that they remained in their Hands for want of Buyers.

F. by the ſaid *T. J.* as for his Expences and Coſts laid out by him about his Suit in this Cauſe, whereof he is convicted, as it appears to us of Record, and which Mayor and Citizens, by Virtue of a Mandate lately made to them for that Purpoſe upon our Writ of *Fieri Facias* to them directed have taken the ſaid Goods and Chattels, and the ſame are remaining in their Hands unſold, for Want of Buyers, as you yourſelf have returned to us at *Weſtminſter*, [*ſuch a Day*, or *at a Day now paſt*] and have you thoſe Monies, *&c.* to render, *&c.* [*as in the former*].

The Entry of a Writ of **Diſtringas** to a Bailiff of a Liberty, and a **Continuance** after a **Capi Corpus**, and a **Languidus** in Priſona returned.
Clift 892.

(11.) The Sheriff was commanded, that he ſhould take *J. C.* late of *Bury St. Edmunds*, in the County aforeſaid, *Wool-comber*, if, *&c.* and ſafely, *&c.* ſo that he ſhould have his Body here at this Day (to wit) in fifteen Days from *Eaſter-Day*, to anſwer to *W. T.* Gent. in an Action, wherefore with Force and Arms he broke and entered the Houſe of the ſaid *William* at *Bury St. Edmunds*, and there made an Aſſault upon the ſaid *William*, and beat, wounded and ill-treated him, ſo that his Life was greatly deſpaired of, and other Wrongs, *&c.* to the great Damage, *&c.* and againſt the Peace, *&c.* And now here at this Day, comes the ſaid *W.* by his Attorney, and tenders himſelf on the 4th Day againſt the ſaid *J.* in the ſaid Action, and the ſaid *J.* doth not appear, and the Sheriff is now commanded, that he make his Mandate to the Steward of the Liberty of *St. Edmunds-Bury* in the ſaid County, who hath the full Power of Executing and Returning all Writs within the ſaid Liberty, out of which Liberty the ſaid Sheriff could not execute the ſaid Writ, which Steward, to wit, Sir *Jermyn Davers*, Bart. gave this Anſwer to the ſaid Sheriff, that he had taken the Body of the ſaid *J.* who is in ſuch a languiſhing Condition in his Majeſty's Priſon of *Bury St. Edmunds*, that he could not have the Body of the ſaid *J.* here at this Day for Fear of his Death; therefore the Sheriff is commanded, that he diſtrain

ſtrain the ſaid Steward by all his Lands, &c. and that for the Profits, &c. ſo that he have here the Body of the ſaid *J.* on the Morrow of the *Holy Trinity*, whether he be in Health or ſick, whom, &c. to anſwer to the ſaid *William* in the ſaid Action: At which Day comes here the ſaid *William*, by his Attorney, and the Sheriff hath done nothing therein, nor made a Return of his Writ; therefore let another Writ, as before, be directed to him, in the Manner aforeſaid, returnable here in three Weeks from the Day of St. *Michael*, &c. At which Day comes here the ſaid *William*, by his Attorney, and the Sheriff hath done nothing therein, nor made a Return of his Writ; therefore let there be another Writ, as before, directed to him in the Manner aforeſaid, returnable here in eight Days of St. *Hillary*, [*ſo go on with as many Continuances as there are*].

The Entry of a Writ of Diſtringas againſt the late Sheriff upon a Ca' Sa'.

(13.) Our Sovereign Lord the King hath ſent to the Sheriff of *D.* his Writ Cloſe in theſe Words, *ſſ. George* the Second, &c. To the Sheriff of *D.* Greeting: We command you, that you diſtrain *J. D.* late Sheriff of the County aforeſaid, by all his Lands, &c. and that for the Profits, &c. ſo that you have before us at *Weſtminſter*, [*on ſuch a Day*] the Body of *R. S.* (taken by the ſaid late Sheriff, and detained in our Priſon under the Cuſtody of the ſaid Sheriff, as he hath lately charged himſelf by his Return ſent to us) to make Satisfaction to *J. M.* for 60 *l.* for his Damages which he hath ſuſtained, as well by reaſon of a Treſpaſs done by the ſaid *B. S.* to the ſaid *J. M.* as for his Expences and Coſts laid out by him about his Suit in this Particular, whereof he is convicted; and have you there at the ſame Time this Writ. *Witneſs*, &c. At which Day before our Sovereign Lord the King at *Weſtminſter*, came the ſaid *J. M.* in his proper Perſon, and *A. B.* now Sheriff of the County aforeſaid returned, that the ſaid *C. D.* the ſaid late Sheriff is diſtrained, whereof iſſued 10 *l.* and being bailed by *J. B.* and *L. M.* he doth not appear, nor hath he now the Body

Body of the ſaid *R. S.* before our ſaid Sovereign Lord the King; therefore his Pledges aforeſaid are amerced, &c. and the Sheriff is, as he hath before been, commanded, that he diſtrain the ſaid late Sheriff by all his Lands, &c. and that for the Iſſues, &c. ſo that he have the Body of the ſaid *R. S.* before our Sovereign Lord the King at *Weſtminſter* on [*ſuch a Return*, &c.) to make Satisfaction to the ſaid *J.* for the Damages aforeſaid, &c.

A Diſtringas Corpora Juratorum with a decem tales.

(14.) George the Second, &c. We command you, as we have before, commanded you, that you diſtrain *A. B. C. D.* (naming the Jury) Jurors ſummoned in our Court before us between *J. H.* Plaintiff and *P. B.* by all their Lands and Chattels in your Bailiwick, ſo that neither they, or any other Perſon for them, do meddle therewith till you have another Precept from us for that Purpoſe, and that you anſwer to us for the Profits thereof, ſo that you have their Bodies before us at *Weſtminſter*, on *Wedneſday* next after three Weeks of St. *Michael*, or before our faithful and well beloved *Philip* Lord *Hardwick*, our Chief Juſtice, aſſigned to hold Pleas in our Court before us, if he ſhall come before, on *Monday* the 6th Day of *July* at *Weſtminſter* aforeſaid in the *Great Hall* of Pleas there, commonly called *Weſtminſter-Hall*, according to the Form of the Statute in ſuch Caſe made and provided, to make a Jury between the ſaid Parties in an Action of Treſpaſs and Ejectment, and to hear their Judgment for many Defaults: * We command you likewiſe, that you put on that Jury, ten other free and lawful Men of the Body of your County, every one of which to have 10 *l.* a Year at leaſt, in Lands, Tenements or Rents, ſuſpected by neither of the ſaid Parties; and have you thoſe Perſons before us at *Weſtminſter* at the Day aforeſaid, to make up the Jury aforeſaid, together with the other Jurors in the Manner aforeſaid, ſo that a Jury may not at that Day remain to be taken for Want of Jurors; and have you the Names of thoſe

whom you ſhall ſo newly put on the Jury, and this Writ. Witneſs, &c.

(15.) George, &c. [*as in the former to the* Aſterisk *above*]: We command you, that you remove *J. H.* and *R. G. &c.* from the Panel of the ſaid Jury, and place on the Jury in their ſtead ten, as well Knights as others, free and lawful Men of your County ſuſpected by neither of the Parties: And have you there, *&c.*

A Diſtringas, where ſome of the Jurors are withdrawn from the Panel, and others to be put in their Stead in an Action of Scandalum Magnatum. Theſ. Brevium 86.

(16.)———We command you, that you diſtrain *R. D.* and the other Jurors mention'd in the Panel hereunto annex'd, ſummon'd in our Court before us between *C. J.* Widow, who ſues in this Caſe, as well for us as for herſelf (*Plaintiff* and *H. H.* Knt. by all their Lands, *&c.* [*as in the former to the Words*] ſo that you have their Bodies before us [*ſuch a Return*] to make a Jury between the ſaid Parties in an Action of Treſpaſs and Contempt againſt thoſe, who ſue in the Court Chriſtian after our Royal Prohibition before directed and delivered to them to the contrary, and to hear their Judgment for many Defaults; provided nevertheleſs, that if two Writs ſhall come to you for this Purpoſe, do you execute and return but one of them: And have you there, *&c.*

A Diſtringas by Proviſo in Action of Treſpaſs and Contempt, for ſuing after a Prohibition. Theſ. Brev. 87.

Divorce.

The Manner of pleading a Divorce a Mensa & Thoro.

(1.) AND the ſaid *J.* by *E. M.* his Attorney, comes and pleads, that the ſaid *Mary* ought not to have her Dower of the Rectory aforeſaid, with the Appurtenances of the Endowment of the ſaid *J. S.* her late Husband, becauſe he ſaith, that the ſaid *J. S.* her ſaid late Huſband was ſeiſed of the Rectory aforeſaid, with the Appurtenances, whereof, *&c.* in his Demeſne as of Fee, and being ſo ſeiſed thereof, the ſaid *J. S.* afterwards [*ſuch a Day and Year*] at *B.* aforeſaid gave and granted the ſaid Rectory, with the Appurtenances, to one *R. W.* Eſq; To have and to hold the ſaid Rectory, with the Appurtenances, to the ſaid *R.* his Heirs and Aſſigns for ever, by Virtue of which Gift and Grant he the ſaid *R.* was ſeiſed of the ſaid Rectory, with the Appurtenances, in his Demeſne as of Fee; and being ſo ſeiſed thereof, the ſaid *R. W.* afterwards, at *N.* aforeſaid, died ſeiſed of ſuch his Eſtate therein; after whoſe Death the ſaid Rectory, with the Appurtenances, whereof, *&c.* deſcended to the ſaid *J. W.* as Son and Heir of the ſaid *R. W.* By means whereof the ſaid *J. W.* entered into the ſaid Rectory, with the Appurtenances, and was ſeiſed thereof in his Demeſne as of Fee, and being ſo ſeiſed thereof, afterwards, to wit, on the 22d Day of *October* in the Year of our Lord 1734. at *London*, in the Conſiſtory Court there, before *B. L.* Doctor of Laws, the Judge Delegate, together with the expreſs Aſſent and Conſent of *W. M.* ſitting with him in Judgment, and alſo together with Counſel learned in the Law, with whom he conſulted in this Caſe, continually having before him all the Facts that were requiſite, and calling before him what was neceſſary to be called, a Divorce was celebrated between the ſaid *J. S.* and the ſaid *M.* and the ſaid Doctor *Lewis*, with the Aſſent and

and Conſent aforeſaid pronounced, decreed and declared the ſaid *J.* and *M. S.* otherwiſe called *Portman*, to be duly and effectually ſeparated and divorced from Bed and Board and mutual Cohabitation and Performance of Conjugal Rites, by reaſon of Adultery Libell'd againſt and committed by the ſaid *M.* and proved in that Caſe, and afterwards the ſaid *J.* died at *N.* aforeſaid; and this he is ready to verify, where and when the Court ſhall think fit: Wherefore he prays Judgment, whether the ſaid *M.* ought in this Caſe to have Dower of the Rectory aforeſaid, with the Appurtenances, of the Endowment of the ſaid *J. S.* her ſaid late Husband, *&c.* Rob. Ent. 248, 249.

Duces Tecum.

(1.) GEORGE the Second, *&c.* Whereas we lately commanded you, that you ſhould have before our Juſtices at *Weſtminſter*, on the 20th Day of *February* next, the Body of *M. E.* which you have taken by our Precept, to make Satisfaction to *E. E.* and *W. E.* as well for a certain Debt of 40 *l.* which the ſaid *E.* and *W.* have recovered in our Court before us at *Weſtminſter*, againſt him, as alſo of 50 *s.* which were adjudged to the ſame *E.* and *W.* in our ſame Court before our Juſtices at *Weſtminſter*, for their Damages which they have ſuſtained by the Occaſion of Detaining of that Debt, whereof he is convicted; and although the aforeſaid *M. G.* is ſound and in good Health, and able to travel, as we have received Information by credible Teſtimony, and notwithſtanding your permitting him to go at large, you have returned to our Juſtices at *Weſtminſter* at that Day, that the ſaid *M.* was ſick in our Priſon under your Cuſtody, ſo that you were not able to have his Body there, for that he labour'd A Duces Tecum.

under ſuch Infirmities and Diſeaſes in the ſame, that he could not travel or be carried without great Danger of his Life; and becauſe we will not, that our liege People ſhall be eluded or retarded by your frivolous Return, We command you, that you or your Under-Sheriff be before our Juſtices at *Weſtminſter* from the Day of St. *Michael* in three Weeks, bringing with you the aforeſaid *M. G.* whether he be in a good or ill State of Health, to make Satisfaction to the aforeſaid *E. W.* for his Debt and Damages aforeſaid; and this you are not to omit, under the Penalty of 20 *l.* And have you there this Writ. Witneſs, &c.

An Elegit.

(1.) GEORGE the Second, *&c.* To the Sheriff of *Berkſhire*, Greeting: Whereas *C. D.* lately in our Court, before our Juſtices at *Weſtminſter*, by the Conſideration of the ſame Court recovered againſt *A. B.* late of *Farrington* in your County, Mercer, as well a certain Debt of 200 *l.* as alſo 100 *l.* which in our ſame Court were awarded to the ſaid *C. D.* for his Damages, which he had ſuſtained by reaſon of detaining the ſaid Debt, whereof he is convicted. And the ſaid *A.* afterwards came into our ſame Court, and according to the Form of the Statute in that Caſe made and provided, made his Election to have delivered to him all the Goods and Chattels of the ſaid *A. B.* (except his Oxen and Beaſts of Plow) and likewiſe a Moiety of all his Lands and Tenements in your Bailiwick, to hold the ſame Goods and Chattels as his own Goods and

and Chattels, and alſo to hold the ſaid Moiety as his Freehold to him and his Aſſigns, according to the Form of the ſaid Statute until he ſhall have levied the ſaid Debt and Damages thereon: And therefore we command you, that without Delay you cauſe to be extended at a reaſonable Price and delivered to the ſaid *A.* all the Goods and Chattels of the ſaid *A.* (except his Oxen and Beaſts of Plow, and likewiſe a Moiety of all his Lands and Tenements in your Bailiwick of which the ſaid *A.* was ſeiſed on the Morrow of the *Holy Trinity*, in the 6th Year of our Reign (at which Day Judgment was given thereon) or at any Time ſince for him to keep the ſaid Goods and Chattels as his own Goods and Chattels, and alſo for him and his Aſſigns to hold the ſaid Moiety as their Freehold, according to the Form of the ſaid Statute, until the ſaid Debt and Damages ſhall be thereon levied; and after what Manner you ſhall execute this our Precept, do you make appear to our Juſtices at *Weſtminſter*, in three Weeks from the Day of St. *Michael*, under your Seal and the Seals of thoſe Perſons, by whoſe Oaths you ſhall make ſuch Extent and Appraiſment: And have you there this Writ. Witneſs, &c.

An Elegit after a Sci' Fa' upon a Recognizance taken before the Lord Chief Juſtice of the C. B. at his Chambers.

(2.) George the Second, &c. To the Sheriff of *Eſſex*, Greeting: Whereas lately in our Court before our Juſtices at *Weſtminſter*, it had been adjudged, that *T. K.* might have an Execution againſt *L. P.* of [*ſuch a Place*] and *C. D.* of [*ſuch a Place*] for 206 *l.* which the ſaid *L.* and *C.* on the 29th Day of *Nov.* in the 7th Year of our Reign, before Sir *Robert Eyre*, Knt. our Chief Juſtice of our Court of Common Pleas at his Chambers ſituate in *Serjeants-Inn* in *Chancery-Lane*, *London*, acknowledged themſelves, and each of them acknowledged himſelf to owe to the ſaid *T.* to be levied of the Goods and Chattels, Lands and Tenements of them or either of them, as by the Recognizance thereof delivered into our Court before our Juſtices at *Weſtminſter*, by our ſaid Chief Juſtice to be inrolled, and now remaining inrolled in our

ſame Court of Record, doth manifeſtly appear, and the ſaid *T.* afterwards came into our ſame Court, and according to the Form of the Statute in ſuch Caſe made and provided, made his Election to have all the Goods and Chattels of the ſaid *L.* and *C.* except their Oxen and Beaſts of the Plow, and likewiſe a Moiety of all their Lands and Tenements in your County, delivered to him; To have and to hold [*as in the former to the Words*, until the ſaid ſeveral Sums of 260 *l.* be levied thereof]; and therefore we command you, that without Delay you cauſe to be delivered to the ſaid *T.* all the Goods and Chattels of the ſaid *L.* and *C.* (except their Oxen and Beaſts of the Plough,) and likewiſe a Moiety of all their Lands and Tenements in your County, whereof the ſaid *L.* and *C.* were ſeiſed or poſſeſſed at the Day of the Caption of the ſaid Recognizance, or at any Time ſince, by a reaſonable Price and Extent, for him the ſaid *T.* to detain the ſaid Goods and Chattels as his own, and alſo for him the ſaid *T.* and his Aſſigns, to hold the ſaid Moiety as his and their Freehold, according to the Form of the Statute aforeſaid, until the ſaid ſeveral Sums above acknowledged to be due be levied thereof, according to the Form and Effect of the ſaid Recognizance, and in what Manner [*as in the former.*]

An Elegit after a Fi' Fa', upon which a Devaſtavit had been found by a Verdict againſt Executors,

(3.) George the Second, *&c.* To the Sheriff of *Surry*, Greeting: Whereas by our Writ, we lately commanded our Sheriffs of *London*, that of the Goods and Chattels, which were of and belonged to *H. B.* lately called *H. B.* of *Southwark*, Eſq; at the Time of his Death in the Hands of *M. B.* late of *Croydon* in your County, Gentleman, and *R. S.* late of *Kingſton* in your County, Malſter, being Executors of the Laſt Will and Teſtament of *H. B.* in their Bailiwick, they ſhould cauſe to be made as well a Debt of 200 *l.* which *W.* had lately recovered in our Court before our Juſtices at *Weſtminſter* againſt the ſaid *M. B.* and *R. S.* as alſo 10 *l.* which in our ſame Court

Court were awarded to the ſaid *W. S.* for his Damages, which he ſuſtained by reaſon of Detaining the ſaid Debt, to be levied of the ſaid Goods and Chattels, if they had ſo many in their Hands unadminiſter'd, and if they ſhould not have ſo many, then the ſaid Damages to be levied of the proper Goods and Chattels of the ſaid *M. B.* and *R. S.* and that they ſhall have the Money before our Juſtices at *Weſtminſter* on the Octaves of St. *Martin* laſt paſt, to render to the ſaid *W.* for his ſaid Debt and Damages, whereof the ſaid *M. B.* and *R. S.* are convicted; and the ſame Sheriffs at that Day returned to our Juſtices at *Weſtminſter*, that the ſaid *M. B.* and *R. S.* at the Day of Suing out of the ſaid original Writ of the ſaid *W.* (that is to ſay) on the 2d Day of *April*, in the 5th Year of our Reign, had divers Goods and Chattels, which were of and belonged to the ſaid *H. B.* the Teſtator, at the Time of his Death in their Hands unadminiſter'd, to the Value of 200 *l.* whereof the ſaid *W.* might have had Satisfaction for his ſaid Debt, as it was found by a certain Jury of the County, by Virtue of our Writ of *Niſi Prius* taken at *Guildhall* of the City of *London*, before Sir *Robert Eyre*, Knt. our Chief Juſtice of our ſaid Court of Common Pleas (there being aſſociated to him *John Higham*, Gent. according to the Form of the Statute in ſuch Caſe made and provided) which ſaid Goods and Chattels they the ſaid *M. B.* and *R. S.* had waſted, converted and diſpoſed of to their own Uſe, whereby the ſaid Sheriffs were not able to levy the ſaid Debt and Damages or any Part thereof; and our ſaid Sheriffs of *London* further returned, that the ſaid *M. B.* and *R. S.* had not any Goods or Chattels in their Bailiwick, whereof they were able to levy the ſaid Debt and Damages or any Part thereof, as they had been commanded to do; wherefore it was conſidered in our ſame Court, that the ſaid *W.* might have an Execution againſt the ſaid *M. B.* and *R. S.* for the ſaid Debt and Damages, to be levied upon the proper Goods and Chattels of the ſaid *M. B.* and *R. S.* and the

ſaid *W.* afterwards came into our ſame Court, and according to the Form of the Statute in ſuch Caſe made and provided, choſe to have delivered to him all the Goods and Chattels of the ſaid *M. B.* and *R. S.* (except their Oxen and Beaſts of the Plough) and likewiſe a Moiety of all their Lands and Tenements in your Bailiwick (*as in the former*].

An Elegit after an Elegit.

(4.) George the Second, &c. To the Sheriff of *Middleſex*, Greeting: Whereas *C. D.* lately in our Court before our Juſtices at *Weſtminſter*, by the Judgment of the ſame Court had recovered againſt *A. B.* late of *Hampſtead* in your County, 40 *l.* which in our ſame Court were awarded to the ſaid *C.* for his Damages, which he had ſuſtained by reaſon of a certain Treſpaſs committed by the ſaid *A.* againſt the ſaid *C.* with Force and Arms, and againſt our Peace, at *Hampſtead* aforeſaid in your County, whereof he is convicted; and the ſaid *C.* afterwards came into our Court, and according to the Form of the Statute in ſuch Caſe made and provided, choſe to have delivered to him all the Goods and Chattels of the ſaid *A.* (except his Oxen and Beaſts of the Plough) and likewiſe a Moiety of all his Lands and Tenements in your Bailiwick, to keep the ſame Goods and Chattels as his own Goods and Chattels, and to hold the ſaid Moiety as his Freehold to him and his Aſſigns according to the Form of the ſaid Statute, until the ſaid Damages ſhould be levied thereupon: Wherefore we commanded you, that without Delay you ſhould cauſe to be extended by a reaſonable Price, and delivered to the ſaid *C.* all the Goods and Chattels of the ſaid *A.* (except his Oxen and Beaſts of the Plough) and likewiſe a Moiety of all his Lands and Tenements in your Bailiwick, of which the ſaid *A.* was ſeiſed or poſſeſſed in three Weeks from the Day of St. *Michael* laſt paſt (on which Day Judgment was given thereon) for him to keep the ſaid Goods and Chattels as his own Goods and Chattels, and alſo to hold the ſaid Moiety as his Freehold to him and his

his Aſſigns, according to the Form of the ſaid Statute, until he ſhould have levied the ſaid Damages thereof; and in what Manner you ſhould have executed that our Precept, you was to make appear to our Juſtices at *Weſtminſter*, on the Octaves of St. *Hillary* laſt paſt, and you having returned to our Juſtices at *Weſtminſter*, a certain Inquiſition taken before you at the Caſtle of *Norwich*, on the 10th of *January* laſt paſt, by the Oaths of twelve honeſt and lawful Men of your Bailiwick, by which it is found, that the ſaid *A.* was ſeiſed of the Manor of, &c. [*reciting the Lands returned by the ſaid Inquiſition*] whereupon the ſaid *C.* came into our Court, and alledged, that the ſaid *A.* at the Time of giving the ſaid Judgment, and afterwards, had divers Lands and Tenements in your County of the yearly Value of 40 *l.* beſides the ſaid Manor, &c. [*here naming the Lands*] above ſpecify'd in the ſaid Inquiſition, and was alſo poſſeſſed of divers Goods and Chattels in your County, to the Value of 40 *l.* which you might have extended, appraiſed and delivered to the ſaid *C.* and therefore we command you, as we before commanded you, that you cauſe to be extended by a reaſonable Price, and to be delivered to the ſaid *C.* all the ſaid Goods and Chattels of the ſaid *A.* [*except his Oxen and Beaſts of the Plough*] and likewiſe a Moiety of the ſaid Manor [*naming the Lands belonging thereto*] above ſpecify'd in the ſaid Inquiſition, of which the ſaid *A.* at the Time of giving the ſaid Judgment, or at any Time ſince, was ſeiſed or poſſeſſed of, and alſo a Moiety of the ſaid Manor and Tenements, with the Appurtenances, above ſpecify'd in the ſaid Inquiſition, for him and his Aſſigns, to hold the ſame as their Freehold, according to the Form of the Statute in ſuch Caſe made and provided, until the ſaid Damages ſhall be levied thereupon; and in what Manner you ſhall execute this Precept do you make appear to our Juſtices at *Weſtminſter*, on the Octaves of the Purification of the bleſſed Virgin *Mary*, under your Seal and the Seals of thoſe, by whoſe

whoſe Oaths you ſhall take ſuch Inquiſition: And have you there this Writ. Witneſs, &c.

An Elegit of a Moiety of an annual Rent againſt Ter-tenants after a Scire Facias.

(5.) George the Second, &c. To the Sheriff of *Kent*, Greeting: Whereas in our Court before our Juſtices at *Weſtminſter*, it was lately adjudged, that *T. B.* might have an Execution againſt *H. C.* by his Default, as well for a Debt of 190 *l.* which the ſaid *T.* heretofore in our Court, that is to ſay, in *Hillary* Term in the 5th Year of our Reign before Sir *Robert Eyre* Knt. and his Brethren our Juſtices of our Court of Common Pleas at *Weſtminſter*, by the Judgment of the ſame Court had recovered againſt *J. G.* late of *Greenwich* in your County, Carpenter, as alſo 8 *l.* which in our ſame Court were awarded to the ſaid *E. T.* for his Damages, which he had ſuſtain'd by reaſon of detaining the ſaid Debt, of a certain annual Rent iſſuing out of the Manor of *W.* in your County, by the Default of the ſaid *H.* and inaſmuch as you yourſelf returned to our Juſtices at *Weſtminſter*, on the Octaves of St. *Martin* laſt paſt, that the ſaid *H.* was Tenant of an annual Rent of 32 *l.* and that the ſaid annual Rent of 32 *l.* was due to the ſaid *J. G.* on the Octaves of St. *Hillary*, in the 6th Year of our Reign, at which Day Judgment was given againſt the ſaid *H. J.* for the Debt and Damages aforeſaid, and afterwards the ſaid *F.* came into our ſame Court, and according to the Form of the ſaid Statute in ſuch Caſe made and provided, and choſe to have delivered to him a Moiety of the ſaid yearly Rent iſſuing out of the ſaid Manor, with the Appurtenances, to hold to him and his Aſſigns, according to the Form of the ſaid Statute, until the ſaid Debt and Damages ſhould be levied thereof: And therefore we command you [*as in the former*].

(6.) George

(6.) George the Second, &c. To the Sheriff of *Norfolk*, Greeting: Whereas by our Writ we lately commanded our Sheriffs of *London*, that of the Lands and Chattels of *Thomas Diſcipline*, late of *S.* in your County, Gent. that they ſhould cauſe to be levied as well a Debt of 200 *l.* which *John Davis*, Gent. in our Court, before our Juſtices at *Weſtminſter*, had recovered againſt him, as alſo 70 *s.* which had been adjudged in our ſaid Court to the ſaid *John* for his Damages, which he had ſuſtained by Occaſion of detaining that Debt; and that they ſhould have thoſe Monies before our Juſtices at *Weſtminſter*, on a certain Day now paſt, to render to the ſaid *John* for his Debt and Damages aforeſaid, whereof he is convicted: And our ſaid Sheriffs of *London* made a Return to our ſaid Juſtices at *Weſtminſter*, at that Day, that the ſaid *Thomas* had no Goods or Chattels in their Bailiwick, whereof they could cauſe to be levied the Debt and Damages aforeſaid; whereupon it was made appear in our ſaid Court, that the ſaid *Thomas* had ſufficient Lands and Chattels in your Bailiwick, whereof you could be able to levy the Debt and Damages aforeſaid; whereupon we by another Writ lately commanded you, that you ſhould cauſe to be levied the Debt and Damages aforeſaid of the ſaid Lands and Chattels of the ſaid *Thomas* in your Bailiwick; and that you ſhould have thoſe Monies before our Juſtices aforeſaid at *Weſtminſter* aforeſaid, at a certain Day now likewiſe paſt, to be rendered to the ſaid *John* for the Debt and Damages aforeſaid: And whereas you at that Day returned to our Juſtices aforeſaid at *Weſtminſter* aforeſaid, that in order to have that Writ executed you had commanded Sir *Henry Hobbard*, Knt. and Bart. Bailiff, for our Liberty of our Dutchy of *Lancaſter*, in your County (who hath the full Power of Executing of all the Writs and Precepts within the aforeſaid Liberty, and the Returns thereof, to whom the Execution of that Writ altogether belonged, for that no other Execution thereof could be made by you out of the Liberty

An Elegit after a Nulla bona returned upon a Fi' Fa' returned, and Part of the Debt and Damages levied upon a Non admittas Fi' Fa' directed to the Bailiff of the Dutchy of Lancaſter.

Liberty aforeſaid in your ſaid County) that of the Lands and Chattels of the ſaid *Thomas*, he ſhould cauſe to be levied the Debt and Damages aforeſaid, according to the Intent and Purport of the ſaid Writ; which Bailiff gave you this Anſwer, that by Virtue of your Warrant for that Purpoſe by you to him directed, he had cauſed to be made of the Lands and Chattels of the ſaid *T. D.* 160 *l.* Part of the Debt and Damages aforeſaid; and that he had thoſe Monies ready before our Juſtices at the ſame Day at *Weſtminſter* aforeſaid, to be rendered to the ſaid *John*, as he was directed to do by the Warrant aforeſaid: And foraſmuch as it hath been teſtified in our ſame Court, that the ſaid *Thomas* hath ſufficient Lands and Chattels in your Bailiwick, whereof the 43 *l.* 10 *s.* Reſidue of the Debt and Damages aforeſaid might be levied; and the ſaid *John* afterwards came into our Court, and according to the Statute in that Caſe made and provided, made his Election, that all the Goods and Chattels of the ſaid *Thomas* (except Oxen and Beaſts of the Plough), and alſo a Moiety of all the Lands and Tenements of the ſaid *Thomas* in your Bailiwick ſhould be deliver'd to him, for him to have thoſe Goods and Chattels aforeſaid as his own Goods and Chattels, and alſo to hold a Moiety of his Lands to him and his Aſſigns, as his Freehold, according to the Form of the Statute aforeſaid, until the aforeſaid 43 *l.* 10*l.* ſhall be levied thereof; and therefore we command you, that you cauſe to be delivered to the aforeſaid *Thomas* without Delay all the Goods and Chattels of the ſaid *Thomas* (except his Oxen and Beaſts of his Plough) and likewiſe a Moiety of all the Lands and Tenements of the ſaid *Thomas* in your Bailiwick, of which the ſaid *Thomas*, on the Octaves of St. *Hillary*, in the 7th Year of our Reign, at which Time Judgment was given thereupon, or at any Time afterwards was ſeiſed, and to be extended by a reaſonable Price, for him the ſaid *Thomas* to have the Goods and Chattels aforeſaid, as his own Goods and Chrttels, and alſo to hold a Moiety, as aforeſaid

ſaid, as his Freehold to him and his Aſſigns, according to the Form of the Statute aforeſaid; and until the 43 *l.* 10 *l.* ſhall be thereof levied; and in what Manner you ſhall have executed this our Precept, do you make appear to our Juſtices at *Weſtminſter*, from the Day of *Eaſter* in five Weeks, under your Seal and the Seals of thoſe, by whoſe Oath you ſhall have made that Extent and Appraiſment; and have you there the Names of thoſe by whoſe Oath you ſhall make that Extent and Appraiſment, and this Writ. Witneſs *Robert Eyre* at *Weſtminſter* the 23d Day of *October* in the 6th Year of our Reign.

The Return of an Elegit awarded.

(7.) At which Day comes here the ſaid *(Plaintiff)* by his Attorney aforeſaid, and the Sheriff, to wit, *R. B.* Eſq; now returns here an Inquiſition taken before him at *C.* in the County aforeſaid, on the 3d Day of *September* laſt paſt, by the Oath of twelve, *&c.* by Virtue of the Writ aforeſaid, by which it is found, that the ſaid *(Defendant)* in three Weeks from the Day of St. *Michael* in the 3d Year of the Reign of his preſent Majeſty, on which Day the Judgment aforeſaid was given; and afterwards, that is to ſay, on the Day of the Caption of the Inquiſition aforeſaid, was ſeiſed in his Demeſne as of Freehold, for the Term of his Life of and in, *&c.* [*naming the Lands*] of the clear yearly Value of 20 *l.* in the Iſſues and Profits thereof, beſides Repriſes. And moreover by the Inquiſition aforeſaid it is likewiſe found, that the Defendant had not any Goods or Chattels either in the ſaid three Weeks of St. *Michael* in the ſaid 3d Year aforeſaid, on which Day the Judgment aforeſaid was given, or at any Time afterwards, until the Day of the Caption of the Inquiſition, nor hath any other or more Meſſuages, Lands, Tenements or Hereditaments in the County aforeſaid, that in any wiſe could be extended or appraiſed to the Knowledge of the Jurors of that Inquiſition; the Moiety of which ſaid Premiſſes, with the Appurtenances, that is to ſay, one Meſſuage called *N. &c.* then in the Poſſeſſion

ſeſſion of the ſaid *(Defendant)* the ſaid Sheriff on the ſaid Day of the Caption of the Inquiſition aforeſaid, cauſed to be delivered to the ſaid *(Plaintiff)* at a reaſonable Price and Extent aforeſaid, to hold as his Freehold to him and his Aſſigns, according to the Form of the Statute aforeſaid, until the Debt and Damages aforeſaid thereof ſhall be levied, as he was commanded by the Writ aforeſaid.

The Manner of pleading an **Elegit** awarded, and granted, with the **Return** thereof, of a **Seiſin** on the Inquiſition, and the Defendants pray Judgment, if the Plaintiff ſhall have another Execution to a **Sci' Fa'** againſt Executors.

(8.) And the ſaid *G. Prowſe*, by *F. G.* his Attorney comes and appears; whereupon the ſaid *Nicholas* prays an Execution for the Debt and Damages aforeſaid againſt the ſaid *G.* according to the Form and Effect of the ſaid Recovery, to be adjudged to him: And the ſaid *George* pleads, that the ſaid *N.* ought not to have his Execution againſt him for the Debt and Damages aforeſaid, by Virtue of the Judgment above mentioned in the ſaid Writ of *Scire Facias*, becauſe he ſaith, that after the ſaid Judgment was given, and before the ſaid Writ of *Scire Facias* was ſued out upon the Judgment aforeſaid againſt the ſaid *George*, as aforeſaid, (to wit) in *Hillary-Term*, in the 7th Year of the Reign of his preſent Majeſty, the ſaid *Nicholas* came into this his Majeſty's Court, before the King himſelf at *Weſtminſter* in the County of *Middleſex*, and according to the Form of the Statute in ſuch Caſe made and provided, made his Election, that all the Goods and Chattels, which were of the ſaid *George*, except his Oxen and Beaſts of the Plough, and likewiſe a Moiety of all the Lands and Tenements whereof the ſaid *George*, at the Time when the ſaid Judgment was given, or at any Time afterwards, was ſeiſed; To have and to hold the ſaid Goods and Chattels as his own Goods and Chattels, and alſo to hold a Moiety of the ſaid Lands and Tenements as his Freehold to him and his Aſſigns till the ſaid *Nicholas* ſhould have levied the Debt and Damages aforeſaid ſpecified in the ſaid Writ of *Scire Facias*, and mentioned in the Judgment aforeſaid, according to the Form of the Statute aforeſaid; where-

Elegit awarded.

upon the Sheriff of *Somerſet* was then and there commanded by the ſame Court, by his Majeſty's Writ, that by a reaſonable Price and Extent he ſhould cauſe to be delivered to the ſaid *Nicholas* all the Goods and Chattels, which were of the ſaid *George* in his Bailiwick, (except Oxen and Beaſts of the Plough) and alſo a Moiety of all the Lands and Tenements in his Bailiwick, of which the ſaid *George* at the Time when the ſaid Judgment was given, or at any Time afterwards was ſeiſed; To have thoſe Goods and Chattels as his own Goods and Chattels, and alſo to hold the Moiety of the ſaid Lands and Tenements as his Freehold to him and his Aſſigns, till the ſaid *Nicholas* ſhould fully have levied thereof the Debt and Damages aforeſaid; and in what Manner the ſaid Sheriff ſhould execute his ſaid Majeſty's Precept, the ſaid Sheriff ſhould make appear to his ſaid Majeſty at *Weſtminſter* in *Eaſter-Term* then next following, under his Seal and the Seals of thoſe by whoſe Oath he ſhould make ſuch Extent and Appraiſment; and that the ſaid then Sheriff ſhould there have the Names of thoſe by whoſe Oath he ſhould make ſuch Extent and Appraiſment, and the Writ aforeſaid, which Writ of *Elegit* the ſaid *Nicholas* afterwards, and before the Return thereof, to wit, on the 1ſt Day of *April* [*in ſuch a Year*] at *W.* in the ſaid County of *Somerſet*, delivered to *Edward Popham* Eſq; then Sheriff of the ſaid County of *Somerſet*, to be executed in due Form of Law, by Virtue of which Writ afterwards it was found, by an Inquiſition taken before the ſaid *Edward Popham* then Sheriff of the ſaid County of *Somerſet*, on the 1ſt Day of *May* [*in ſuch a Year*] at *Ivelcheſter* in the ſaid County of *Somerſet*, by the Oath of twelve good and lawful Men of his Bailiwick, that the ſaid *George*, on the Day of the Caption of that Inquiſition, was poſſeſſed of divers Goods, Chattels and Cattle mentioned in the ſaid Inquiſition, of the Price and Value of 120 *l.* and that the ſaid *George*, on the Day of the Caption of the ſame Inquiſition, was ſeiſed of a Meſſuage and

The Writ granted.

The Delivery of the Writ to the Sheriff.

The Return.

Seiſin found. and ſeveral Acres of Land of the ſaid *George*, likewiſe mentioned in the ſame Inquiſition; and that the ſaid then Sheriff had by a reaſonable Price and Extent delivered to the ſaid *Nicholas* the ſaid Goods, Chattels and Cattle mentioned in the ſaid Inquiſition, and a Moiety of the Lands and Tenements aforeſaid, of which the ſaid *George* was ſeiſed at the Day of the Caption of the ſaid Inquiſition, for him the ſaid *Nicholas* to have the ſaid Goods, Chattels and Cattle as his own Goods, Chattels and Cattle, and alſo to hold the Moiety of the Lands and Tenements aforeſaid as his Freehold, to him and his Aſſigns, until the ſaid *Nicholas* ſhould levy the Debt and Damages aforeſaid thereof, according to the Intent and Purport of that Writ, as by the ſaid Writ and Inquiſition now remaining in his ſaid Majeſty's Court, before the King himſelf, more fully may appear; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *N.* ought to have any further Execution for the Debt and Damages aforeſaid, by Virtue of the ſaid Judgment againſt the ſaid *George*, &c.

Judgment pray'd, if any other Execution.

Replication, Nul tiel Record.

(9.) And the ſaid *N. C.* replies, that he ought not to be delay'd from having his Execution for the Debt and Damages aforeſaid, againſt the ſaid *George*, by any Thing above alledged by the ſaid *George* in his Plea, becauſe he ſaith, there is not any ſuch Record of the Writ of *Elegit* and Inquiſition aforeſaid now remaining in his ſaid Majeſty's Court before the King himſelf, as is above ſuppoſed by the Plea aforeſaid; and this he is ready to verify: Whereupon he prays Judgment, and an Execution for the Debt and Damages aforeſaid, to be adjudged to him, *&c.*

Rejoinder, that there is ſuch a Record.

(10.) And the ſaid *G. P.* rejoins, that there is ſuch a Record of the *Elegit* and Inquiſition aforeſaid now remaining in his ſaid Majeſty's Court before the King himſelf, as is above ſuppoſed by the Plea aforeſaid, as it appears by the Record of the ſaid Writ and Inquiſition affiled of *Eaſter-*

Term in the 21ſt Year of the Reign of his preſent Majeſty, and now remaining in his ſaid Majeſty's Court before the King himſelf; and this he is ready to verify by the Record, and prays, that the ſaid Roll and Record of the ſaid Writ and Inquiſition may be ſeen and inſpected by this Court of our ſaid Sovereign Lord the King, *&c.* and becauſe, *&c.*

Excommunication.

A Writ of Excommunicato Capiendo, with a Non omittas, &c. 1 Lut. 17.

(1.) JAMES the Second, *&c.* To the Sheriff of *Middx.* Greeting: Whereas *William Trumbal* and *Charles Parrot*, Doctors of Laws, our Judges, with others Delegates, have lately ſignified to us, in a Cauſe of Appeal and Complaint, which came before them in Judgment, by Virtue of our Commiſſion of Delegates between *John Bradley*, Gent. Party-Appellant and Querelant of the one Part, and *Cecilia Bradley*, Wife of the ſaid *John Bradley*, Party-Appellee and Defendant, undiſcuſſed, rightfully and lawfully proceeding againſt the ſaid *John Bradley*, Gent. to Judgment, (whereupon there was an Appeal in this Caſe,) by reaſon of his manifeſt Contumacy, in not paying to the ſaid *Cecil Bradley*, his Wife, the Sum of 5 *l.* of lawful Money of *England* for Expences of the Suit, and the Sum of 8 *l.* of like lawful Money for further Expences of the Suit, and the Sum of 23 *l.* for Alimony, Expences for Clothes excepted; and alſo the Sum of 23 *l.* of like lawful Money for Alimony, and the Sum of 15 *l.* of like lawful Money for Alimony, except as aforeſaid; and likewiſe the further Sum of 15 *l.* for Alimony aforeſaid, beſides Clothing; and alſo the Sum of 22 *l.* Reſidue of the Sum of 35 *l.* of like lawful Money for Expences of the Suit lately taxed

by the Judgment, upon which the Appeal was brought, in the whole amounting to the Sum of 111 *l.* of like Money, by the Authority of the ſaid *William Trumball* and *Charles Parrot* our Judges Delegrates, he the ſaid *John Bradley* is excommunicated, and will not abide by the ſaid Eccleſiaſtical Cenſure; forafmuch therefore as our Royal Power of the Holy Church ought not to be diminiſhed in Matters of Complaint, which belong to her, and that we lately commanded our late Sheriff, that he ſhould impriſon the ſaid *John*, by taking his Body, according to the Cuſtom of *England*, till he ſhould make Satisfaction to the Holy Church, as well for the Contempt as for the Injury done to her by him; and in what Manner he ſhould execute that our Precept, he ſhould make known to us at a certain Day now paſt, whereſoever we ſhould then be in *England*, that we might further cauſe to be done in the Premiſſes, what of Right and according to the Form of the Statute in ſuch Caſe made and provided, ought to be done; whereupon our late Sheriff of *Middleſex* lately returned, that the ſaid *John* was not to be found in his Bailiwick, as it appears in our Court before us of Record; therefore, according to the Form of the Statute, we command you, as we have often commanded our late Sheriff, that you omit not by reaſon of any Liberty in your Bailiwick, but do you take the ſaid *John Bradley*, if he ſhall be found in your Bailiwick, and ſafely keep him, ſo that he make Satisfaction to our Holy Church, as well for the Contempt as the Injury done to her by him; and if the ſaid *John* cannot be found in your Bailiwick, then in your open County at the General Aſſizes and Gaol-Delivery, or at the next Quarter-Seſſions of the Peace, to be held before the Juſtices of the Peace within your County, according to the Form of the Statute aforeſaid, do you make publick Proclamation, That the ſaid *John Bradley* do within ſix Days after ſuch Proclamation render his Body to the Gaol and Priſon of your County, there to remain a Priſoner, accord-

according to the Tenor and Effect of our other Writ before directed to the late Sheriff, under the Penalty of 20 *l.* and this do you in no wiſe omit at your Peril; and in what Manner you ſhall execute this our Precept, do you make known to us, on the Morrow of the Aſcenſion of our Lord, whereſoever we ſhall then be in *England*, that we may cauſe further to be done in the Premiſſes what of Right and according to Law and the Form of the Statute aforeſaid ought to be done. Witneſs, &c.

The Manner of ſetting forth an Excommunication. 1 Saund. 127.

(2.) And the ſaid *Edward King* further pleads, that the ſaid *Edward Lake* and other Officers of the Church aforeſaid, in Contempt of the Laws of the Land, and out of mere Revenge at ſeveral Times before the Publication of the ſaid Writing, at *Aſhby* in the ſaid County of *Lincoln*, cited the ſaid *Edward King* and his Tenants, to wit, *R. C. T. W. T. T. A. B.* and *J. O.* of *Aſhby* aforeſaid, at their Will and Pleaſure, without any Accuſations or Preſentments againſt them, to appear from Time to Time before the ſaid *Edward Lake* at Places remote, to wit, at *Sleford* in the ſaid County of *Lincoln*, to take an Oath againſt their Wills, repugnant to the Laws of the Land, and by reaſon of ſuch illegal Acts excommunicated the ſaid *Edward King* and his Tenants aforeſaid at ſeveral Times, to wit, at *Sleford* aforeſaid, to their great Damage, Vexation, Injury and Expence; and the ſaid *Edward King* further pleads, that before the Publication of the Writing aforeſaid, to wit, on the 1ſt Day of *Auguſt*, in the 10th Year of the Reign of his preſent Majeſty aforeſaid, at *Sleford* aforeſaid, the ſaid *Edward Lake* being the Official, as aforeſaid, by Colour of his Authority, and for his own Profit, and in order further to oppreſs and vex the ſaid *Edward King* and his Tenants, illegally ſignified the ſaid Excommunication againſt *Robert Chevin* and *Thomas Townrow*, the ſaid Tenants of the ſaid *Edward King*, by him illegally denounced into his Majeſty's high Court of Chancery at *Weſtminſter*; and thereupon afterwards, to wit, the ſame Day and Year ſued out of the ſaid Court

of Chancery at *Weſtminſter* aforeſaid, Writs of *Excommunicato Capiendo* againſt the ſaid Tenants of the ſaid *Edward King* aforeſaid, and by Colour thereof the ſaid *Edward Lake* and his Officers afterwards, to wit, the ſame Day and Year, at *Sleford* aforeſaid, extorted from the ſaid *R. C.* Tenant of the ſaid *Edward King*, the Sum of 3 *l.* 13 *s.* 4 *d.* and from the ſaid *T. T.* another of the Tenants of the ſaid *Edward King*, a Bond of 20 *l.* in Diſcharge of the particular Sums mentioned in the ſaid Schedule to the ſaid Writing annexed, which the ſaid *Edward Lake* and his Officers then and there pretended to be due to them, *&c.*

Executors.

Plene Adminiſtravit.

(1.) AND the aforeſaid *C.* by *J. M.* his Attorney, comes and defends the Force and Injury, when, *&c.* and ſaith, that the ſaid *A.* ought not to have his ſaid Action againſt him, becauſe he ſaith, that he hath fully adminiſter'd all the Goods and Chattels, which were of the ſaid *H.* at the Time of his Death in his Hands to be adminiſter'd, and that he hath not, nor had at the Time of Suing out of the original Writ of the ſaid *A.* or at any Time afterwards in his Hands any Goods or Chattels, which were of the ſaid *H.* unadminiſter'd at the Time of his Death, whereby he the ſaid *C.* could make Satisfaction to the ſaid *A.* for the ſaid ſeveral Sums of Money or any Part thereof [*if in Debt ſay*, the aforeſaid Debt] or any Part thereof; and this he is ready to verify: Wherefore he prays Judgment, if the ſaid *A.* ought to have or maintain his Action aforeſaid againſt him the ſaid *C.* thereof, *&c.*

(2.) And

(2.) And the ſaid *Martin*, *Thomas* and *George* by *John Paltock* their Attorney, come and defend the Force and Injury, and plead, that the ſaid *William* ought not to have or maintain his ſaid Action thereupon againſt them, becauſe they plead, that they have fully adminiſter'd all the Goods and Chattels, which were of the ſaid *Martin* at the Time of his Death; and that they have no Goods or Chattels, which were of the ſaid *Martin* the Teſtator, at the Time of his Death in their Hands to be adminiſter'd, nor had they any, on the Day on which the Original of the ſaid *William* was ſued out, nor have they had at any Time ſince; and this they are ready to verify: Wherefore they pray Judgment, whether the ſaid *William* ought to have his ſaid Action againſt them, *&c.*

Another Plea of Plene Adminiſtravit, with a Replication taking Judgment of Aſſets in futuro.

(3.) And the ſaid *William* (inaſmuch as they the ſaid *M. T.* and *G.* do not by their Plea aforeſaid deny, but that the Deed now brought into this Court is the Deed of the ſaid *M.* the Teſtator, nor but that the ſaid Debt therein ſpecified is a true and juſt Debt not yet paid and ſatisfy'd or otherwiſe diſcharged; and for that the ſaid *W.* cannot deny but that the ſaid *M. T.* and *G.* have not, nor had they on the Day when the ſaid original Writ of the ſaid *William* was ſued out, any Goods or Chattels, which were of the ſaid *M.* the Teſtator, at the Time of his Death in their Hands to be adminiſter'd), he the ſaid *W.* prays Judgment for his ſaid Debt above demanded by him, to be levied of the Goods and Chattels, which were of the ſaid *M.* the Teſtator, at the Time of his Death; and which ſhall hereafter come to the Hands of the ſaid *M. T.* and *G.* to be adminiſter'd: **Therefore it is adjudged**, that the ſaid *William* do recover againſt the ſaid *M. T.* and *G.* his Debt aforeſaid, * to be levied of the Goods and Chattels, which were of the ſaid *M.* the Teſtator, at the Time of his Death, and which ſhall hereafter come to the Hands of the ſaid *Martin*, *Thomas*,

Replication.

and *George* to be adminiſter'd; and be the ſaid *M. T.* and *G.* amerced, &c.

Plene Adminiſtravit pleaded to a Bond againſt an Executor; and that Defendant keeps ſo much Money in his Hands to ſatisfy himſelf of a Debt due to him upon Bond by the Teſtator in his Life-time. Mo. Intr. 198, 199.

Q. whether the Executor may plead the Penalty, where the bond is to himſelf. 1 Ven. 354.

(4.) ——— When, &c. and pleads, that the ſaid *A.* ought not to have or maintain his ſaid Action againſt him, becauſe he ſaith, that the ſaid *C.* in his Life-time, that is to ſay [*ſuch a Day and Year*] at *L.* in the County aforeſaid, for a juſt Debt, by his Obligation [or *Bond*] became bound to him the ſaid *B.* in 40 *l.* of lawful Money of *Great Britain* to be paid to him the ſaid *B.* when he the ſaid *C.* ſhould be afterwards thereunto required, which ſaid Obligation was at the Time of the ſaid *C.*'s Death in its full Force and Effect not releaſed, cancelled or deſtroy'd; and that the ſaid *C.* did not pay or ſatisfy the ſaid 40 *l.* or any Part thereof to the ſaid *B.* in his Life-time; and further ſaith, that he hath fully adminiſter'd all and ſingular the Goods and Chattels, which were of the ſaid *C.* at the Time of his Death; and that he hath not, nor had he at the Time the ſaid *A.* ſued forth his Original Writ, or at any Time ſince, any of the Goods and Chattels that were of the ſaid *C.* at the Time of his Death, in his Hands to be adminiſter'd, whereby he is able to ſatisfy to the ſaid *A.* the ſaid 80 *l.* in the Declaration above mentioned, or any Part thereof, except Goods and Chattels to the Value of 20 *l.* which he retains in his Hands towards Satisfaction of the ſaid 40 *l.* due to him by Virtue of the ſaid Obligation, and in Arrear and unpaid at the Time of the ſaid *C.*'s Death; and this he is ready to verify, and therefore prays Judgment, &c.

Plaintiff replies, that Defendant is Executor in his own Wrong, therefore ought not to retain.

(5.) ——— That he ought not to be precluded from having his Action againſt the ſaid *B.* becauſe Proteſting, that the ſaid Writing in the ſaid Plea above mentioned is not the ſaid *C.*'s Deed, as the ſaid *B.* hath above alledged, for Plea the ſaid *A.* ſaith, that the ſaid *C.* after the Execution of the ſaid Obligation made to him the ſaid *A.* as aforeſaid, the ſaid *C.* died at *L.* aforeſaid, after whoſe Death the ſaid *B.* of his own Wrong,

Wrong, without any lawful Adminiſtration to him committed, did adminiſter divers Goods and Chattels, that were of the ſaid *C.* at the Time of his Death as Executor of the Teſtament of the ſaid *C.* to wit, at *L.* aforeſaid: Whereupon the ſaid *A.* ſued forth his original Writ for his ſaid Debt againſt the ſaid *B.* Executor of the ſaid *C.* in his own Wrong, in which Caſe the ſaid *B.* ought not to retain in his Hands any of the Goods or Chattels that were of the ſaid *C.* at the Time of his Death, to ſatisfy any Debt due to himſelf, by the ſaid *C.* and this he is ready to verify; wherefore inaſmuch as the ſaid *B.* is Executor in his own Wrong, as aforeſaid, and hath acknowledged to have Goods and Chattels, that were of the ſaid *C.* at the Time of his Death in his Hands unadminiſter'd, to the Value of 20 *l.* he prays Judgment and his ſaid Debt, together with his Damages occaſioned by the Detaining thereof, to be adjudged to him, *&c.*

Defendant demurred, and Judgment was given for the Plaintiff. Trin. 13 Car. 1. Roll 636.

Exemplification.

After ſetting forth, that the King was ſeiſed in Right of his Crown, you ſay thus:

(1.) AND being ſo ſeiſed thereof, our ſaid late Sovereign Lord the King afterwards, to wit, [*ſuch a Day and Year*] by his Indenture ſealed with his great Seal of *England* made between his ſaid late Majeſty and one *J. G.* Knt. and duly inrolled of Record in his ſaid late Majeſty's High Court of Chancery at *Weſtminſter*, demiſed, granted, *&c.* [*ſo go on with the Deed ending thus*] as by the ſaid Indenture, the Exemplification

The Manner of Pleading a Leaſe from the King by Indenture under the Great Seal, and an Expemplication thereof. 1 Saund. 188, 189.

plification of the Inrolment thereof, ſealed with the great Seal of *England* of his ſaid late Majeſty, dated at *Weſtminſter* the 10th Day of *November* in the 18th Year of his Reign, he the ſaid *T. R.* according to the Form of the Statute in ſuch Caſe made and provided, brings into this Court, more fully may appear; by Virtue of which Demiſe, *&c.*

Extent.

An Extent on a Cap' ſ. Laicus. Lilly's Entr. 589.

(1.) GEORGE, *&c.* To the Sheriff of *M. Greeting:* Whereas we lately commanded you, that you ſhould take *R. B.* late of the Town of *M.* Gent. in your County, if he was a Layman, and ſhould ſafely keep him in our Priſon, until he ſhould fully make Satisfaction to *J. O.* Executor of the Laſt Will and Teſtament of *R. O.* late of the City of *Briſtol*, Vintner, deceaſed, for 500*l.* which the ſaid *R. B.* on the 24th Day of *June* in the 25 Year of the Reign of our late Sovereign Lord King *Charles* the Second of bleſſed Memory, before *C. G.* Eſq; then Mayor of the City of *Briſtol*, Keeper of the larger Piece of the Seal appointed for Sealing of Statutes Merchant within the ſaid City, and *R. A.* Eſq; then Deputy-Clerk for taking Recognizances of Merchants Debts within the ſaid City, Keeper of the leſſer Piece of the ſame Seal, acknowledged himſelf to owe to the ſaid *R. O.* which he ought to have paid upon the Feaſt of *All-Saints* then next following, and hath not paid the ſame either to the ſaid *R. O.* in his Life-time, or to the ſaid *J.* the Executor, after the Death of the ſaid *R. O.* and in what Manner you ſhould execute ſuch Writ, you ſhould make appear [or *return to us*] on the Octaves of the Purification of the bleſ-

ſed

ſed Virgin *Mary*, whereſoever we ſhould then be in *England*; and you returned to us at that Day, that the ſaid *R. B.* is a Layman, and not to be found in your Bailiwick; therefore we command you, that you deliver to the ſaid *J.* all the Goods and Chattels of the ſaid *R. B.* and all the Lands and Tenements, that were of the ſaid *R. B.* in your Bailiwick, on the Day of the Acknowledging of the ſaid Debt, or at any Time ſince, to whoſeſover Hands they came, (unleſs they have deſcended by Diſcent of Inheritance to any Heir who is under Age) by a reaſonable Price and Extent, the ſaid Goods and Chattels to be held as his own proper Goods and Chattels, and the ſaid Lands and Tenements to him and his Aſſigns as his Freehold, according to the Form of the Statute thereof made and provided, until the ſaid Debt and Damages, together with his neceſſary and reaſonable Damages and Coſts, as in Labour, Suits, Delays and Expences ſhall be levied thereof; nevertheleſs do you take the Body of the ſaid *R. B.* if he ſhall he found in your Bailiwick, and keep him ſafely in our Priſon, until the ſaid *J. O.* ſhall be fully ſatisfied his ſaid Debt in the Manner aforeſaid; and in what Manner you execute this Writ, do you make appear [or *return to us*] in one Month from the Feaſt-Day of *Eaſter*, whereſoever, under your Seal and the Seals of thoſe, *&c.* and have you there the Names, *&c.* and this Writ. Witneſs, &c.

An Extent upon a Judgment recovered againſt an Heir. Off. Brev. 84.

(2.) *Devon*, ſſ. George the Second, *&c.* To the Sheriff of *D.* Greeting: Whereas *W. B.* lately in our Court before our Juſtices at *Weſtminſter*, by the Judgment of the ſame Court recovered againſt *T. C.* late of, *&c.* Son and Heir of *T. C.* late of, *&c.* as well a Debt of 18 *l.* as 7 *l.* 10 *s.* which were adjudged to him for his Damages, which he ſuſtained by reaſon of detaining the ſaid Debt, whereof he is convicted, the ſaid *W.* afterwards came into our ſame Court and pray'd to have all the Lands and Tenements of the ſaid *T. C.* the Son, in your County, which deſcended

to

to him from the ſaid *T. C.* his Father, in Fee Simple, whereof the ſaid *T. C.* the Son, was ſeiſed on the 17th Day of *September* in the 7th Year of our Reign, on which Day the ſaid *W.* ſued forth his Original Writ againſt him concerning the ſaid Debt deliver'd to him; but becauſe it is not known what Lands and Tenements the ſaid *T. C.* the Son, had by Deſcent of Inheritance from the ſaid *T. C.* his Father, on the ſaid Day of Suing forth the ſaid original Writ, we command you, that by the Oaths of good and lawful Men of your Bailiwick, you diligently inquire what Lands and Tenements the ſaid *T. C.* the Son, had by Deſcent of Inheritance from the ſaid *T. C.* his ſaid Father, on the ſaid Day of Suing forth of the ſaid original Writ; and of what Value the ſaid Lands and Tenements are by the Year according to the true Value of them in all their Profits beyond all Reprizes; and ſuch Inquiſition being by you taken, do you without Delay deliver the ſame Lands and Tenements, with the Appurtenances, to the ſaid *W.* according to the true Value of them, to hold to the ſaid *W.* and his Aſſigns, as his Freehold, until the ſaid Debt and Damages ſhall be fully levied thereof; and in what Manner you execute this Writ, do you return [or *make appear*] to our Juſtices at *Weſtminſter* in three Weeks from the Day of St. *Michael*, under your Seal and the Seals of thoſe by whoſe Oath you ſhall make ſuch Extent and Appraiſment; and have you there the Names of thoſe by whom you ſhall make ſuch Extent and Appraiſment, and this Writ. **Witneſs**, &c.

An **Extent** upon a **Capias Utlagatum** after a Recovery in Covenant. Han. 233.

(3.) ſſ. **George** the Second, *&c.* To the Sheriffs of *Suffolk*, Greeting: We command you, that you omit not by reaſon of any Liberty in your Bailiwick, but that you do by the Oaths of good and lawful Men of your County diligently inquire what Goods and Chattels, Lands and Tenements *J. B.* [*ſetting forth his Addition*] hath or had in your Bailiwick on *Monday* next after the Feaſt of St. *Faith* the Virgin, in the 8th Year of our Reign,

or

or at any Time ſince, on which Day the ſaid *S.* was outlaw'd in *London*, at the Suit of *J. B. &c.* in an Action for a Breach of Covenant, whereof he is convicted, as our Sheriffs of *London* have returned unto us at a certain Day now paſt, and that by their Oaths, you cauſe them to be extended and appraiſed according to the true Value thereof, and that you cauſe thoſe Things, which you ſhall find by ſuch Inquiſition, to be taken into our Hands and ſafely kept, ſo that you may anſwer to us for the true Value and Profit thereof; and thoſe Things being ſo extended and appraiſed, what you ſhall do therewith do you make known to us [*ſuch a Return*] whereſoever we ſhall then be in *England*, plainly and diſtinctly under your Seal and the Seals of thoſe by whoſe Oaths you ſhall have cauſed them to be extended and appraiſed, and inaſmuch as the ſaid *S.* being outlawed lurks and wanders up and down in your County, to the Contempt of us and the Prejudice of our Crown (as we have been informed), we command you, that you take the ſaid *S.* whereever he ſhall happen to be found in your Bailiwick, as well within Liberties as without, and ſafely keep him, ſo that you have his Body before us at the Time aforeſaid, to do and abide by whatever our Court before us ſhall conſider of in this Particular: And have you then there this Writ. **Witneſs**, &c.

An Extent upon a Sci' Fa' for an Adminiſtrator for Debt and Damages recovered by an Inteſtate in his Life-time, to be levied of the Lands of the Heir. Mo. Intr. 270.

(4.) ſſ. **George** the Second, *&c.* Whereas [*ſuch a Term*] it was adjudged in our Court before us, *&c.* that *T. H.* Gent. Adminiſtrator of the Goods and Chattels that were of *T. H.* Gent. deceaſed, who died inteſtate, as it was ſaid, ſhould have Execution againſt the ſaid *W. R.* lately called, *&c.* as well for a Debt of 100 *l.* which the ſaid *T. H.* deceaſed, in his Life-time recovered againſt him in our Court before us, as 70 *s.* which, *&c.* by reaſon of Detaining the ſaid Debt, to be levied out of one Meſſuage, with the Appurtenances, in your County, whereof he is Convicted; but becauſe it is not known how much the ſaid Tenements, with the

the Appurtenances, are worth by the Year in their Iſſues and Profits beyond Reprizes, we command you, that you diligently enquire by the Oaths of honeſt and lawful Men of your Bailiwick, how much the ſaid Tenements, with the Appurtenances, are worth by the Year in all their Iſſues and Profits, clear of Reprizes; and upon ſuch Inquiſition being ſo by you diligently made, do you without Delay deliver the ſame Tenements, with the Appurtenances, to the ſaid *T. H.* according to the true Value of them to be held by the ſaid *T. H.* and his Aſſigns according to the Form of the Statute in that Caſe made and provided, until the ſaid Debt and Damages ſhall be fully levied thereof; and in what Manner you ſhall execute this Writ, *&c.* and have you there the Names, *&c.* and this Writ. Witneſs, &c.

An Extent againſt Coheirs and Ter-Tenants upon a Judgment revived by Sci' Fa'.

Off. Brev. 83.

(5.) ff. George, &c. To the Sheriff of *Middleſex*, Greeting: Whereas *C. R.* lately in our Court before our Juſtices at *Weſtminſter*, to wit, in *Eaſter-Term*, in the Year of our Reign recovered againſt *J. A.* late of, *&c.* otherwiſe called, *&c.* as well a Debt of 100 *l.* as 63 *s.* which were adjudged to the ſaid *C.* in our ſame Court for his Damages he had ſuſtained by reaſon of the detaining his ſaid Debt, of which he is convicted; and whereas after the giving of the ſaid Judgment, it was lately conſidered in our ſame Court before our ſaid Juſtices at *Weſtminſter*, that the ſaid *C.* ſhould have Execution againſt *R. G.* and *C.* his Wife, and *J. A.* and *C.* Daughters and Coheirs of the ſaid *J.* Tenants of one Meſſuage, one Curtilage and one Garden, with the Appurtenances, in *S.* which were the Tenements of the ſaid *J.* on in the Year of our Reign, when the ſaid firſt Judgment was given by the Default of them the ſaid *R.* and *A. J.* and *C.* of the ſaid Debt and Damages, to be levied of the ſaid Tenements, with the Appurtenances, as by the Records of the ſaid ſeveral Judgments may appear; but becauſe it is not known of what Value the ſaid Tenements are by the Year beyond

yond all Reprizes, we command you, that by the Oaths of good and lawful Men of your Bailiwick, you diligently enquire what the ſaid Tenements, with the Appurtenances, are worth by the Year in all their Profits according to the true Value of them beyond Repriſes; and ſuch Inquiſition being by you diligently made, do you cauſe the ſame Tenements, with the Appurtenances, without Delay to be delivered to the ſaid *C. D.* according to the true Value of them to be held to the ſaid *C. D.* and his Aſſigns, until the ſaid Debt and Damages ſhall be thereof fully levied; and in what Manner, *&c.*

An Extent for an Executor againſt an Heir, upon a Judgment recovered by the Executor againſt the Heir. Off. Brev. 83.

(6.) *Middleſex*, ſſ. George, &c. To our Sheriff of *M.* Greeting: Whereas *S. L.* Executor of *G. L.* lately in our Court before our Juſtices at *Weſtminſter*, recovered againſt *R. P.* late of, *&c.* Son and Heir of *G. P.* late of, *&c.* otherwiſe called, as well a Debt of 100 *l.* as 50 *s.* which were adjudged to him in our ſame Court for his Damages, which he ſuſtained by reaſon of detaining the ſaid Debt, to be levied of the Lands and Tenements which were of the ſaid *G. P.* in Fee Simple at the Time of his Death being in the Hands of the ſaid *R.* whereof he is convicted: Therefore we command you, as we have before commanded you, that you diligently inquire by the Oath of good and lawful Men of your Bailiwick, of what Lands the ſaid *G. P.* was ſeiſed in Fee Simple at the Time of his Death, and which deſcended to the ſaid *R. P.* as Son and Heir of him the ſaid *G. P.* upon his Death by Right of Inheritance, and of which the ſaid *R. P.* was ſeiſed in his Demeſn as of Fee upon the 18th of *September* in the 4th Year of our Reign, on which Day the ſaid *S.* ſued forth his original Writ againſt the ſaid *R. P.* concerning the ſaid Debt, and of what Value ſuch Lands and Tenements are by the Year, according to the true Value of them in all their Profits, beyond all Repriſes; and when you have ſo taken ſuch Inquiſition, do you without Delay deliver ſuch Lands and Te-

nements, with the Appurtenances, to him the ſaid *S.* to be held by him the ſaid *S.* and his Aſſigns, as their Freehold, until the ſaid Debt and Damages ſhall be fully levied thereof; and in what Manner you ſhall execute this Writ, &c. [*as in others to the End*].

An Extent for the Reſidue of the Debt after a Ca' ſi Laicus and non eſt invent' and an Inquiſition returned, and a Teſtat' thereon of other Lands not found by the Inquiſition. Off. Brev. 82.

(7.) ff. George, &c. To the Sheriff of Greeting: Whereas we by our Writ commanded our late Sheriff of *B.* that he ſhould take the Body of *G. R.* &c. [*reciting the* Capias ſi Laicus *until you come to*] and hath not yet paid the ſame to him, as he alledged; and in what Manner he ſhould execute our Writ he ſhould make known [or *return*] to our Juſtices at *Weſtminſter* in fifteen Days from the Day of St. *Martin* laſt paſt; and our ſaid Sheriff of *B.* at that Day returned to our Juſtices at *Weſtminſter*, that the ſaid *G.* was a Layman, and not found in his Bailiwick, by reaſon whereof we commanded you, as we had before commanded him, that you ſhould without Delay cauſe to be delivered to the ſaid *D.* all the Goods and Chattels, Lands and Tenements, &c. [*as in other Extents, till you come to the Words* [to be detained, &c. until, &c. [*as in others, for which ſee the Writ next following*] ſhould be thereof levied; and in what Manner you ſhould execute that Writ, you ſhould make appear [or *return*] to our Juſtices at *Weſtminſter* in one Month from the Feaſt-Day of *Eaſter* laſt paſt; and you at that Time returned to our Juſtices at *Weſtminſter*, that by Virtue of the ſaid Writ to you directed, you by the Oath of good and lawful Men of your County, had taken an Inquiſition at *B.* in your County, upon the 10th Day of *April* laſt paſt, by which it is found, that the ſaid *G.* before the Taking of the ſaid Inquiſition, to wit, on the Day of *November* in the Year of our Reign, had been and then was ſeiſed in his Demeſne, as of a Freehold, for the Term of his Life, of one Meſſuage, &c. [*reciting the Inquiſition, until you come to*] and that it is farther found by the ſaid Inquiſition, that the ſaid *G.*

had no Goods or Chattels, or more Lands or Tenements in your County, at the Time of the acknowledging the ſaid Debt, or any Time ſince, to the Knowledge of the Jurors of that Inquiſition; and you further returned to our ſaid Juſtices at *Weſtminſter* [*and ſo go on with the Return on the Back of the Writ, till you come to the Words*] as you was commanded by that Writ; whereas it is teſtify'd in our Court by ſufficient Evidence, that there are other Lands and Tenements, which were of the ſaid *G.* on the Day of acknowledging the ſaid Debt, and ſince (beſides the Lands and Tenements aforeſaid delivered and extended in the Manner aforeſaid) in your County, whereof the Reſidue of the ſaid Debt and Damages may be levied; therefore we command you to deliver to the ſaid *R.* all thoſe Lands and Tenements, that were of the ſaid *G.* on the Day of acknowledging the ſaid Debt and ſince (except the ſaid Lands and Tenements, which have been extended and delivered in the Manner aforeſaid) in your County, to be held by a reaſonable Price and Extent, together with the Lands and Tenements before extended to him and his Aſſigns as his Freehold, according to the Form of the ſaid Statute, until the Reſidue of the ſaid Debt, together with his Damages and neceſſary and reaſonable Coſts, as in Labour, Suits, Delays and Expences, ſhall be levied thereof; and in what Manner you execute this Writ, do you make appear [or *return*] to our Juſtices at *Weſtminſter* in fifteen Days from the Day of St. *Martin*, under your Seals and the Seals of thoſe, *&c.* And have you this Writ there at the ſame Time. Witneſs, &c.

(8.) George &c. To our Sheriff of *M.* Greeting (*and ſo go on as in the next foregoing Writ, till you come to the Words*) whereas it is teſtified in our ſame Court before us, that there are divers other Goods and Chattels, Lands and Tenements in your County, which were of the ſaid *G.* at the Time of acknowledging the ſaid Debt and ſince

The like after a Teſtat' of other Goods as well as Lands. Off. Brev. 83.

ſince, which you may extend and deliver to the ſaid *R.* therefore we command you, that without Delay you cauſe all and ſingular the Goods and Chattels, Lands and Tenements, which were of the ſaid *G.* in your County at the Time of acknowledging the ſaid Debt, or at any Time ſince, to be delivered to the ſaid *R.* at a reaſonable Price and Extent, the ſaid Goods and Chattels, to be detained by him as his own proper Goods and Chattels, and alſo to hold the ſaid Lands and Tenements, *&c.* [*and ſo on to the End, as in the next foregoing Writ.*]

After the Entry of the Writ, you go on as follows:

The Entry of an Award of two Extents into different Counties after a Capias ſi Laicus and non eſt invent' returned upon a former Extent.
2 Mo. Intr. 267.

(9.) And the ſaid Sheriff now returns, that the ſaid *C. D.* is a Layman, and is not found in his Bailiwick; and thereupon the ſaid *A. B.* [*the Plaintiff*] prays ſeveral Writs thereon (to wit) one to be directed to the Sheriff of the County of *D.* the other to the Sheriff of the County of *J.* and they are granted to him, *&c.* and in what Manner, *&c.* they ſhall ſeverally make appear on the Morrow of the Purification of the bleſſed Virgin *Mary*, under their Seals and the Seals of thoſe, *&c.*

The like of ſeveral Sums of Monies to be levied in different Counties.
Off. Brev. 84.
2 Mo. Intr. 267.

(10.)———And thereupon the ſaid *A. P.* according to the Form of the Statute, *&c.* prays ſeveral Writs (to wit) one to be directed to the Sheriff of the County of the City of *York* for 200 *l.* Part of the ſaid 300 *l.* and the other to the Sheriff of *S.* for 100 *l.* Reſidue of the ſaid 300 *l.* and they are granted to him, *&c.* and in what Manner, *&c.* as well the ſaid Sheriff of the City of *York*, as the ſaid Sheriff of *S.* ſhall make appear here [*ſuch a Day, the Return*] the ſame Day is given to the ſaid *A. P.* to be here, *&c.*

(11.) And

(11.) ——— And now at this Day comes the ſaid *J. A.* by *B. C.* his Attorney, and the ſaid Sheriff now returns, that the ſaid *G. H.* is a Layman, and not to be found, *&c.* And becauſe the ſaid *J.* doth not bring the ſaid Recognizance into Court, a Day is therefore given him to be here in eight Days of St. *Hillary*, then to bring in the ſaid Recognizance, *&c.*

The like where the Plaintiff not having the Recognizance to ſhew to the Court, a Day is given him to bring it in.

Off. Brev. 84. 2 Mo. Intr. 267.

(12.) *Suffolk*, ſſ. The Sheriff was commanded, that he ſhould take the Body of *R. S.* late of [*ſuch a Place*] if he was a Layman, and to be found in his Bailiwick, and ſafely keep him in the Priſon of our Sovereign Lord the King, until *P. D.* Eſq; Adminiſtrator of the Goods and Chattels, which were of *T. P.* who died inteſtate, *&c.* ſhould be ſatisfy'd for 100 *l.* which the ſaid *R.* on the 19th Day of *September* in the 6th Year of the Reign of his ſaid preſent Majeſty, before *T. L.* and *E. D.* Gentlemen, then Bailiffs of the Town of *Ipſwich*, and *A. M.* Gentleman, then deputed Clerk to take Recognizances of Debts within the ſaid Town, according to the Form of a Statute Merchant, acknowledged himſelf to owe to the ſaid *T. P.* which he ought to have paid on the Feaſt of the Purification of the Bleſſed Virgin *Mary* then next enſuing, and hath not yet paid it (as it is ſaid): And that in what Manner, *&c.* he ſhould make known here at this Day, to wit, in fifteen Days from the Day of the *Holy Trinity*. And now here at this Day appears the ſaid *P. D.* by *H. G.* his Attorney, and brings here into this Court, as well the ſaid Recognizance, which teſtifies the ſaid Debt in the Manner aforeſaid, as alſo the Letters of Adminiſtration of the ſaid *P. D.* which teſtify the granting of Adminiſtration in the Manner aforeſaid; and the ſaid Sheriff (to wit) *T. B.* Eſq; now returns, that the ſaid *R.* is dead, *&c.* And thereupon the ſaid *D.* by Virtue of the Statute, *&c.* prays his Majeſty's

The Entry of a Writ of Extent for an Adminiſtrator.

Off. Brev. 81.

Writ, to be directed to the Sheriff of the County aforeſaid, and it is granted to him, &c. And in what Manner ſoever, &c. he ſhould make it known here, on the Morrow of *All-Souls*, under his Seal and the Seals of, &c.

An Extent in Aid of the King. Lilly's Entr. 307.

(13.) *Middx.* ff. George, &c. To the Sheriff of *M.* Greeting: Whereas *E. Y.* of the Pariſh of *St. Andrew, Holborn*, in the County of *Middleſex*, and Sir *M. K.* Knt. Citizen and Goldſmith of *London*, by their Bond [or *Obligation*] ſealed with their Seals, bearing Date the 25th Day of *April* in the 4th Year of our Reign, are jointly and ſeverally bound to us in the Sum of 40000 *l.* of lawful Money of *Great Britain*, to be paid to us at a certain Day now paſt, which they or either of them have not yet paid or cauſed to be paid, (as it is ſaid); we willing, the ſaid 40000 *l.* now due to us, ſhould be ſatisfied to us as ſoon as may be, do command you, as it is juſt we ſhould, that you omit not by reaſon of any Liberty, but that you enter into it, and diligently inquire, as well by the Oath of good and lawful Men of your Bailiwick, as alſo by the Evidence upon Oath of any other lawful Men of your Bailiwick by whom the Truth may be the better known, as by all other Ways, Means and Methods by which you may more certainly know what Debts, Credits, Securities and Sums of Money the ſaid Sir *M. K.* now hath in your Bailiwick, and that by the Oath of good and lawful Men you diligently extend and cauſe to be taken and ſeiſed into our Hands all and ſingular the ſaid Debts, Credits, Securities and Sums of Money in whoſeſoever Hands they now are, ſo that we may have them, until we ſhall be ſatisfied the ſaid Debt, according to the Form of the Statute lately made and provided for Recovering ſuch our Debts; and we further command you, and by theſe Preſents impower you, to call before you and diligently examine all Perſons whatſoever proper to be examined of and concerning the Premiſſes, leſt this our preſent Mandate remains

to

to be further executed; and in what Manner you execute this our preſent Mandate you ſhall make appear [or *return*] to the Barons of our Exchequer at *Weſtminſter*, on the 18th Day of *November* next following diſtinctly and clearly: And have you there this Writ at the ſame Time. **Witneſs** Sir *T. B.* Knt. at *Weſtminſter*, the 2d Day of *September* in the 5th Year of our Reign.

By the ſaid Bond [or *Obligation*] and by the ſaid Statute of the 33d Year of the Reign of the late King *Henry* VIII. by Warrant and by the Barons.

Maſham.

The Entry of an **Extent**, and the **Return**. Mo. Intr. 277.

(14.) ff. The Sheriff was commanded, that whereas his Majeſty had commanded the ſame Sheriff, that he ſhould take the Body of *J. P.* Eſq; if a Layman and ſhould be found in his Bailiwick, and ſhould ſafely keep him in his ſaid Majeſty's Priſon until, &c. and in what Manner, &c. he ſhould return [or *make it known*] here [*ſuch a Day*] then next following: And the ſaid Sheriff at that Day having returned to the Juſtices here, that the ſaid *J. P.* was a Layman, and not to be found, &c. That he ſhould deliver to the ſaid *W. B.* all the Goods and Chattels, Lands and Tenements, which were of the ſaid *J. P.* in his Bailiwick, on the Day of Acknowledging the ſaid Debt, or at any Time ſince, to whoſe Hands ſoever, &c. unleſs they have deſcended by Deſcent of Inheritance to any Heir being within Age, at a reaſonable Price and Extent, to be held as his Freehold, to him and his Aſſigns, according to the Form of the Statute in that Caſe made and provided, until the ſaid Debt together with his Damages and neceſſary Coſts and Expences ſhould be levied thereof: And nevertheleſs ſhould take and ſafely keep, &c. the ſaid Body of the ſaid *J. P.* if, &c. until the ſaid *W. B.* ſhould be fully ſatisfied his ſaid Debt in the Manner aforeſaid; and in what Manner, &c. the ſaid Sheriff ſhould return [or *make known*]

known] at this Day, to wit, in one Month from the Feaſt of *Eaſter*. And now at this Day the ſaid *W. B.* by *B. S.* his Attorney, comes here; and the Sheriff, to wit, *J. S.* Eſq; now returns, that the ſaid *J. S.* is not to be found, &c. and alſo returns, that he by Virtue of the ſaid Writ, on the 10th Day of *April* laſt paſt delivered to the ſaid *B.* all the Lands and Tenements which were of the ſaid *J.* in his County on the Day of acknowledging the ſaid Debt, or at any Time ſince, by a reaſonable Price and Extent, as follows, to wit, one Meſſuage, thirty Acres of Land, and two Acres of Meadow, with the Appurtenances, in *T.* in the ſaid County at the Value of 40 *s.* by the Year, two Toſts, fifteen Acres of Land, and five Acres of Meadow, with the Appurtenances, in *W.* and *T.* in the ſaid County at the Value of 10 *l.* 6 *s.* 8 *d.* by the Year, beſides Reprizes, the Tenements, with the Appurtenances, &c. to be held by him the ſaid *W. B.* and his Aſſigns, as their Freehold, according to the Direction of the ſaid Writ, as by the ſaid Writ he was commanded, &c.

Extinguiſhment of Copyhold Lands.

The Manner of Pleading an Extinguiſhment of the Eſtate of the Copyholder by a Fine levied by the Lord to the Tenant. Confeſſing the Demiſe by R. S. to B. W.

(1). AND the ſaid *John*, *Alice* and *Joan* ſay, that true it is, that the ſaid *Ralph Snead*, the Elder, upon the ſaid laſt Day of *July* in the 17th Year of the Reign of his late Majeſty King *James* the Firſt, at *Tunſtall* aforeſaid, demiſed to the ſaid *William Burſtem* a Moiety of the Coal-mine aforeſaid, as the ſaid *Richard* doth above ſuppoſe in his Plea aforeſaid; but the ſaid *John*, *Alice* and *Joan* do further ſay, that at and before the Time of the Demiſe aforeſaid, and from thence to the Time of making the Feoffment

ment hereafter mentioned, to the ſaid *Samuel Tellwright*, otherwiſe *Trick*, in the ſaid 17th Year of the Reign of his ſaid late Majeſty King *James* the Firſt hereafter mention'd, there was and Time out of Mind hath been within the Manor of *Tunſtall* in the County of *Stafford*, and Parcel thereof, one Meſſuage, one Cottage, and thirty-two Acres of Land, with the Appurtenances, whereof the Place in which, *&c.* during all the Time aforeſaid, hath been and now is Parcel; and that the ſaid Meſſuage, Cottage, and thirty-two Acres of Land, during all the Time aforeſaid, till the Time of making the ſaid Feoffment, were cuſtomary Tenements of the Manor of *Tunſtall* in the ſaid County of *Stafford*, and demiſed and demiſeable by Copy of Court-Rolls of the Manor aforeſaid, by the Lord of that Manor, by his Steward thereof for the Time being, to any Perſon or Perſons whatſoever willing to take the ſame, in Fee-Simple or otherwiſe, at the Will of the Lord, according to the Cuſtom of that Manor: And the ſaid *John*, *Alice* and *Joan* further ſay, that long before the ſaid Demiſe above ſuppoſed to have been made by the ſaid *Ralph Snead* to the ſaid *William Burſlem*, to wit, on the 18th Day of *April* in the 9th Year of the Reign of her late Majeſty Queen *Elizabeth*, Sir *William Snead*, Knt. was ſeiſed of and in the ſaid Manor of *Tunſtall*, with the Appurtenances, in the ſaid County of *Stafford*, of which Manor the ſaid Meſſuage, Cottage, and 32 Acres of Land, whereof the Place in which, *&c.* then and during all the Time aforeſaid, until, *&c.* were Parcel, as aforeſaid, in his Demeſne as of Fee, and being ſo ſeiſed thereof, he the ſaid *William Snead*, on the ſaid 18th Day of *April* in the 9th Year of the Reign of her ſaid late Majeſty Queen *Elizabeth*, at the Court of the ſaid *William Snead* held at *Tunſtall* aforeſaid within that Manor, by Copy of Court-Rolls of the ſame Manor granted the ſaid Meſſuage, Cottage and thirty-two Acres of Land, of which the Place where, *&c.* was Parcel, to one *Thomas Trick*, Brother and Heir of *Edward*

But that at the Time when, &c. the Place where, &c. was Copyhold Lands of the Manor of Tunſtall.

That Sir W. Snead being Lord of the Manor 18 Apr. 9 Eliz. granted the Place where by Copy, to one T. Trick and his Heirs.

Trick, To have and to hold to the ſaid *Thomas Trick*, his Heirs and Aſſigns for ever, at the Will of the Lord, according to the Cuſtom of that Manor; by Virtue of which Grant the ſaid *Thomas Trick* entered into the ſaid Tenements, with the Appurtenances, whereof, &c. and was ſeiſed thereof in his Demeſne as of Fee, at the Will of the Lord according to the Cuſtom of that Manor: And the ſaid *John*, *Alice* and *Joan* further ſay, that the ſaid *Thomas Trick* being ſo ſeiſed thereof afterwards (to wit) on the 10th Day of *October* in the 15th Year of the Reign of his late Majeſty King *James* the Firſt, in the Court of the ſaid *William Snead* held at *Tunſtall* within that Manor before *John Snead* then Steward thereof, ſurrender'd the ſaid Tenements, with the Appurtenances, whereof, &c. into the Hands of the Lord of the ſaid Manor, according to the Cuſtom thereof, to the Uſe of *Samuel Trick*, Son and Heir apparent of the ſaid *Thomas Trick*, his Heirs and Aſſigns, which Lord of the Manor at the ſaid Court laſt mention'd, by his Steward aforeſaid, by Copy of the Court-Rolls of that Manor admitted the ſaid *Samuel* to the ſaid Tenements, with the Appurtenances, whereof, &c. and granted the ſame to the ſaid *Samuel*, to have and to hold to the ſaid *Samuel*, his Heirs and Aſſigns for ever at the Will of the Lord, according to the Cuſtom of that Manor; by Virtue of which Grant the ſaid *Samuel* entered into the ſaid Tenements, with the Appurtenances, whereof, &c. and was ſeiſed thereof in his Demeſne as of Fee at the Will of the Lord according to the Cuſtom of the Manor aforeſaid; and the ſaid *Samuel* being ſo ſeiſed thereof; and the ſaid *William Snead* being ſo ſeiſed, as aforeſaid, of the ſaid Manor, with the Appurtenances, whereof, &c. he the ſaid *William Snead* before the ſaid Demiſe to the ſaid *William Burſlem* is above ſuppoſed to have been made (to wit) on the 2d Day of *July* in the 17th Year of the Reign of his ſaid late Majeſty King *James* the Firſt at *Tunſtall* aforeſaid, enfeoffed the ſaid *Ralph Snead* of the ſaid Manor, with

That T. T. ſurrender'd the Tenements to the Uſe of S. T. and his Heirs.

Admiſſion of the Tenant.

That S. T. being ſeiſed— and W. S. ſeiſed of the Manor.

with the Appurtenances, To have and to hold the ſaid Manor, with the Appurtenances, to the ſaid *Ralph* and his Heirs for ever; by Virtue of which Feoffment the ſaid *Ralph* entered into the ſaid Manor, with the Appurtenances, whereof, &c. and was ſeiſed thereof in his Demeſn as of Fee; and the ſaid *Ralph* being ſo ſeiſed of the ſaid Manor, with the Appurtenances, whereof, &c. as aforeſaid; and the ſaid *Samuel* being ſo ſeiſed of the ſaid Tenements, with the Appurtenances, whereof, &c. according to the Cuſtom of the Manor aforeſaid, he the ſaid *Ralph* afterwards, and after the ſaid Demiſe is above ſuppoſed to have been made by the ſaid *Ralph* to the ſaid *William Burſlem*, and long before the ſaid Time when, &c. to wit, on the 17th Day of *Auguſt* in the 17th Year of the Reign of his ſaid late Majeſty King *James* the Firſt at *Tunſtall* aforeſaid, by an Indenture made between the ſaid *Ralph Snead*, the Elder, and *Ralph Snead*, the Younger, of the one Part, and the ſaid *Samuel Trick*, by the Name of, &c. of the other Part, a Counterpart of which Indenture ſealed with the Seal of the ſaid *Ralph* and *Ralph*, they the ſaid *John*, *Alice* and *Joan* bring into this Court dated the ſame Day and Year; they the ſaid *Ralph* and *Ralph* by the ſame Indenture enfeoffed the ſaid *Samuel* of the ſaid Tenements, with the Appurtenances, whereof, &c. To have and to hold the ſaid Tenements, with the Appurtenances, whereof, &c. to the ſaid *Samuel* and his Heirs for ever; by Virtue of which Feoffment laſt mentioned the cuſtomary Eſtate in the Tenements aforeſaid, with the Appurtenances, whereof, &c. held, as aforeſaid, of the ſaid Manor, by Copy of the Court-Rolls of that Manor, and before that Time demiſed and demiſable as aforeſaid, were extinguiſhed; and the ſaid *Samuel* became ſeiſed of the ſaid Tenements, with the Appurtenances whereof, in his Demeſne as of Fee, and being ſo ſeiſed thereof, he the ſaid *Samuel* afterwards, to wit, on the 1ſt Day of *May* in the Year of our Lord 1661. at *Tunſtall* aforeſaid died, after whoſe Deceaſe the ſaid Tenements

W. S. before the Demiſe (alledged by the other Party) 2 July, 17 Jac. 1. enfeoffed the ſaid R. S. of the Manor in Fee.

That R. being ſeiſed by an Indenture, enfeoffed the ſaid S. T. of the Tenements.

Whereby the Copyhold became extinct.

A Deſcent of the Eſtate and a Seiſin by Deſcent. 2 Lut. 1245, 1246, 1247.

nements, with the Appurtenances, &c. deſcended to one *John Trick*, Son and Heir of the ſaid *Samuel*; whereupon the ſaid *John* enter'd into the ſaid Tenements, with the Appurtenances, whereof, &c. and was thereof ſeiſed in his Demeſne as of Fee, and being ſo ſeiſed thereof, &c.

Fairs.

A Plea to an Action of Treſpaſs of a Juſtification for Stallage in a Fair by Preſcription.

(1.) —— OUGHT not to have or maintain his ſaid Action thereof againſt him, &c. becauſe he ſaith, That for ſo long a Time as there is no Remembrance of any Man to the contrary, there hath been and now is a Meadow called *F.* in *F.* aforeſaid, lying near and adjoining to the Manor of the ſaid Borough of *St. Peter* in the ſaid County of *N.* and that the Dean and Chapter of the Cathedral Church of the Borough of *St. Peter* aforeſaid, before and at the ſaid Time when the ſaid Treſpaſs is ſuppoſed to have been committed, were and now are ſeiſed of the Manor aforeſaid, with the Appurtenances, in their Demeſne as of Fee; and the ſaid Dean and Chapter, and all thoſe whoſe Eſtate they have and had at the ſaid Time when, &c. in their ſaid Manor, with the Appurtenances, have Time out of Mind been uſed and accuſtomed to have and hold, partly within the ſaid Manor, and partly within the ſaid Meadow, a Fair on the Vigil, and on the Feaſt-Day of St. *Matthew* the Apoſtle, and on the Morrow of the ſaid Feaſt yearly and every Year, as belonging only to the ſaid Manor, with the Appurtenances, and have during all the Time aforeſaid received and taken, and been uſed and accuſtom'd

accuſtomed to receive and take reaſonable Toll, to wit, (amongſt other Things) for every double cover'd Stall erected and occupied at the ſaid Fair within the Meadow aforeſaid for ſelling and expoſing to Sale Wares and Merchandizes in the ſame Stall, and for the Ground and Soil by and near the ſaid Stall, and occupied therewith, as aforeſaid, from the Perſon ſo occupying the ſaid Stall and Ground or Soil, 1 *s.* and on Default of paying ſuch Toll on demanding or requiring thereof at any Time during the Fair by their Servants, Bailiffs or Officers, have during all the Time aforeſaid been uſed and accuſtomed to take the ſaid Wares and Merchandizes ſo expoſed to Sale in and upon ſuch Stall, Ground or Soil, or a reaſonable Part thereof in the Name of a Diſtreſs, and to detain the ſame till Satisfaction be made to them for ſuch Toll: And the ſaid *James* further ſaith, that before the ſaid Time when, &c. that is to ſay, on the 20th Day of *September* in the 11th Year aforeſaid, and on the 21ſt Day of the ſame Month, being the Vigil and Feaſt-Day of St. *Matthew* the Apoſtle, and alſo on the Morrow of the ſame Feaſt, being the Day and Year aforeſaid, above ſpecified in the ſaid Declaration, the Fair of the ſaid Dean and Chapter was had and held within the ſaid Manor of *P.* and in the ſaid Meadow, and that the ſaid *John* had and occupied in that Fair a large and double cover'd Stall, then erected in the Meadow aforeſaid, and the Ground and Soil nigh the ſame Stall for ſelling and expoſing to Sale Wares and Merchandizes to be ſold at that Fair, and ſo 1 *s.* for the Toll thereof became due from and payable by the ſaid *John* to the ſaid Dean and Chapter of the Cathedral Church of the ſaid Borough of *St. Peter* (one *Samuel Freeman* Doctor of Divinity then being the Dean of the ſaid Church); wherefore, the ſaid *James* then being at that Fair Collector of the Toll, and an Officer and Servant to the ſaid Dean and Chapter for that Purpoſe then and a little before the ſaid Time, when, &c. to wit, on the 22d of *September* in the Year aforeſaid, at

F. afore-

F. aforeſaid in the ſaid County, required the ſaid *John* to pay him, for the Uſe of the ſaid Dean and Chapter, 1 *s.* for the Toll aforeſaid, which Toll the ſaid *John* then and there totally refuſed to pay, and hath not yet paid it, for which reaſon the ſaid *James*, as a Servant and an Officer to the ſaid Dean and Chapter, and by their Command, at the ſaid Time when, *&c.* during the Fair aforeſaid, took in the Name of a Diſtreſs two Pair of Bellows then being expoſed to Sale on the ſaid Stall at *T.* aforeſaid, for the Toll, and carry'd them away, as it was lawful for him to do, and now detains the ſame in his Cuſtody, which is the ſame Treſpaſs whereof the ſaid *John* doth now complain againſt him; and this he is ready to verify: Wherefore he prays Judgment, whether the ſaid *John* ought to have or maintain his ſaid Action againſt him for the ſame, *&c.*

2 Lut. 1516, 1517, 1518.

A Plea in an Action of Treſpaſs for the taking and carrying away of two Hats at E. That P. P. before the ſaid Time when, &c. was ſeiſed of the Manor of G. (whereof the Vill of G. is Parcel) in Fee, and then preſcribes to hold a Fair in the Town of G. [on ſuch a Day] yearly, and that they uſed to receive of every Hatter 2 s. 6 d. for Stallage; and upon Refuſal to pay, to take and diſtrain, &c. with a Traverſe of being guilty at the Place in the Declaration.

(2.) And the ſaid *John Wilkins*, by *Richard Bell* his Attorney, comes and defends the Force and Injury, when, *&c.* and as to the coming with Force and Arms, and alſo as to the whole Treſpaſs aforeſaid, except the taking and carrying away of the two Hatts, above ſuppoſed to have been done in the Declaration aforeſaid, pleads, that he is not in any wiſe guilty thereof; and thereof he puts himſelf upon the Country; and the ſaid *Thomas Bodle* does likewiſe the ſame: And as to the Taking and Carrying away of the ſaid two Hats, above ſuppoſed in the ſaid Declaration to have been taken and carried away, he the ſaid *John* pleads, that the ſaid *Thomas* ought not to have his ſaid Action againſt him for the ſame, becauſe he ſaith, that one *Philip Parker*, Eſq; long before and alſo at the ſaid Time when the ſaid two Hats are above ſuppoſed to have been taken, was and now is ſeiſed of and in the Manor of *Groombridge*, with the Appurtenances, in the

County of *Kent* (whereof the Vill of *Groombridge* in the ſaid County is, and at the ſaid Time when &c. was, and Time out of Mind hath been Parcel), in his Demeſne as of Fee; and being ſo ſeiſed thereof he the ſaid *Philip*, and all thoſe whoſe Eſtate he the ſaid *Philip* now hath, and at the ſaid Time when, &c. had, of and in the Manor aforeſaid, with the Appurtenances, have had and kept, and have Time out of Mind been uſed and accuſtomed to have and keep a Fair in the Vill of *Groombridge* aforeſaid, in the ſaid County of *Kent*, on every 14th Day of *September* yearly, and every Year, as belonging and appertaining only to the ſaid Manor, with the Appurtenances; and the ſaid *Philip* and all thoſe whoſe Eſtate he now hath, and at the ſaid Time when, &c. had, of and in the Manor aforeſaid, with the Appurtenances, have had and received, and during all the Time aforeſaid have been uſed and accuſtomed to have and receive of every Hatter, who hath had a Stall in any ſuch Fair for his ſtanding to ſell Hats in that Fair, 2 *s.* 6 *d.* of lawful Money of *England*, for his ſtanding in ſuch Stall to ſell Hats there; and if any ſuch Hatter hath refuſed to pay the ſaid 2 *s.* 6 *d.* for his ſtanding in ſuch Stall to ſell Hats in ſuch Fair, then the ſaid *Philip*, and all thoſe whoſe Eſtate he now hath, and at the ſaid Time when, &c. had, of and in the ſaid Manor, with the Appurtenances, during all the Time aforeſaid have uſed and been accuſtomed by his Bailiffs or Servants for the Time being to take and diſtrain the Goods and Chattels of ſuch Hatter refuſing to pay the ſaid 2 *s.* 6 *d.* found within the Manor aforeſaid, and to detain the ſame in their Cuſtody till the ſaid 2 *s.* 6 *d.* ſhould be paid; and the ſaid *John Wilkins* doth further plead, that the ſaid *Philip* being ſo ſeiſed of the ſaid Manor, with the Appurtenances, as aforeſaid, on the 14th Day of *September* in the 35th Year of the Reign of his preſent Majeſty, had and held a Fair in the ſaid Vill of *Groombridge* in the ſaid County of *Kent*, and that the ſaid *Thomas Bodle* then and there being a Hatter, on

the

the ſame 14th Day of *Septomber* in the 35th Year aforeſaid, had a Stall in that Fair, for his ſtanding to ſell his Hats in that Fair, and ſold ſeveral Hats in the ſaid Stall during the Time of the Fair aforeſaid, whereby 2 *s.* 6 *d.* became due and payable by the ſaid *Thomas* to the ſaid *Philip* for his ſtanding in the ſaid Stall to ſell Hats in that Fair, whereof the ſaid *John Wilkins* as a Servant to the ſaid *Philip*, and by his Command then and there gave Notice to the ſaid *Thomas Bodle*, and then and there required him to pay to the ſaid *John Wilkins*, for the Uſe of the ſaid *Philip*, the ſaid 2 *s.* 6 *d.* which the ſaid *Thomas* then and there refuſed to do; for which reaſon the ſaid *John Wilkins*, as Servant to the ſaid *Philip*, and by his Command afterwards (that is to ſay) upon the ſaid 14th Day of *September* in the 35th Year aforeſaid, took and carried away the ſaid two Hats ſpecified in the ſaid Declaration, found within the ſaid Manor (to wit) in the ſaid Vill of *Groombridge* in the ſaid County of *Kent*, in the Name of a Diſtreſs for the ſaid 2 *s.* 6 *d.* due and unpaid to the ſaid *Philip* by the ſaid *Thomas*, as aforeſaid, as it was lawful for him to do, which is the ſame Taking and Carrying away of the ſaid two Hats, whereof the ſaid *Thomas* doth now above complain againſt him;

Traverſe. **Without this**, that the ſaid *John* is guilty of the Taking or Carrying away of the ſaid two Hats or either of them at *Eaſt-Grinſteed* aforeſaid in the ſaid County of *Suſſex*, or at any Place in this Kingdom of *England* out of the ſaid Vill of *Groombridge* in the ſaid County of *Kent*; and this the ſaid *John* is ready to verify: Wherefore he prays Judgment, whether the ſaid *Thomas* ought therefore to have his ſaid Action againſt him, *&c.*

3 Lev. 227. **An Objection** *was taken to this* Plea, *that the* Traverſe *was* not good, *becauſe it did* not extend *to any other* Time, *as well as to any other* Place; *but the* Court *held, that the Concluſion of the Plea with the Words,* **which is the ſame Treſpaſs**, &c, *with a Traverſe of any*

any other Place is good, without a Traverſe of any other Time.

(3.) And the ſaid *William* and *John C.* by *Edward Halſey* their Attorney, come and defend the Force and Injury, when, &c. and as to the Coming with Force and Arms, and alſo as to the whole Treſpaſs, except the Taking and Carrying away of ten Pints of the Barley aforeſaid, they plead, that they are in no wiſe guilty thereof; and thereof they put themſelves upon the Country; and the ſaid *John Kerby* does likewiſe the ſame: And as to the Taking and Carrying away of the ſaid ten Pints of Barley, the ſaid *William* and *John C.* plead, that the ſaid *John Kerby* ought not to have his Action therefore againſt them, becauſe they ſay, that the ſaid Town of *Wallingford* is, and for ſo long a Time as there is no Remembrance of any Man to the contrary hath been an antient Borough, and that all the Inhabitants of that Town, for ſo long a Time as there is no Remembrance of any Man to the contrary, till the 27th Day of *October* in the 36th Year of the Reign of his late Majeſty K. *Charles* the Second, have been a Body Corporate and Politick, in Subſtance, Deed and Name, and by ſeveral Letters Patent of ſeveral Kings and Queens of this Kingdom of *England*, at ſeveral Times confirmed, as well by the Name of the Burgeſſes of *Wallingford*, as by the Name of the Mayor, Burgeſſes and Inhabitants of the Town of *Wallingford*, as alſo by the Name of the Mayor, Burgeſſes and Commonalty of the Borough of *Wallingford*, and that all the Inhabitants of that Borough from Time to Time during all the Time aforeſaid, by the ſeveral Names aforeſaid, till the ſaid 27th Day of *October* in the 36th Year aforeſaid, have had and been uſed and accuſtomed to have an antient Market within the ſaid Borough, held every *Tueſday*, and *Friday* in every Week yearly, in a Market-Place there held, for the Selling of all Grain of what Kind ſoever, and of other Merchandizes brought to that Market, together with

A Juſtification for Toll. As to the Force and Arms, not Guilty, and Iſſue thereon.

Juſtification.

with Stallage, Picage and other Profits, Advantages and Emoluments of ſuch Market, coming, ariſing and happening, and have during all the Time aforeſaid till that Day aforeſaid, repaired and cleanſed, and been uſed and accuſtomed to repair and cleanſe the Place and Ground, where the ſaid Market hath been kept, and the Streets, Ways and Paſſages within the ſaid Vill and the Precincts thereof in the ſaid County of *Berkſhire*, leading at and towards the ſaid Place and Ground, for the more convenient Carriage of the Grain and Merchandizes to be carried to the ſaid Vill to be there ſold, and by reaſon of the Premiſſes during all the Time aforeſaid have had and receiv'd, and been accuſtomed to have and receive reaſonable Toll, (that is to ſay), Toll of all Grain carried to the ſaid Vill, to be there ſold, and there ſold by any Perſon not an Inhabitant within the ſaid Vill, or by the Laws and Cuſtoms of this Kingdom not otherwiſe diſcharged, (to wit) for every four Buſhels of Grain carried by ſuch Perſons to the ſaid Vill, to be there ſold, and there ſold in any Market-Day aforeſaid, one Pint of the ſaid Grain ſo carried and ſold, to be taken and received by the Perſon or Perſons thereto deputed from Time to Time by the ſaid Mayor of the ſaid Borough for the Time being, for the Uſe and Benefit of the Corporate Body aforeſaid; and that upon the ſaid 27th Day of *September* aforeſaid, in the ſaid 36th Year, his ſaid late Majeſty King *Charles* the Second, by his Letters Patent ſealed with his Great Seal of *England*, and now brought into this Court, bearing Date at *Weſtminſter* the ſame Day and Year, out of his ſpecial Grace, and from a certain Knowledge and mere Motion [or *graciouſly*, *knowingly*, and *willingly*] granted for himſelf, his Heirs and Succeſſors, that the Burgeſſes and Inhabitants of the ſaid Borough ſhould from thence for ever after, in Deed, Subſtance and Name, be a Body Corporate and Politick, by the Name of the Mayor, Aldermen and Burgeſſes of the Borough of *Wallingford*, and by that Name ſhould have perpetual Succeſſion; and his ſaid late Ma-

jeſty by his ſame Letters Patent, for himſelf, his Heirs and Succeſſors, granted and confirmed to the ſaid Mayor, Aldermen and Burgeſſes, and their Succeſſors, that they ſhould from thence for ever after hold and keep a Market upon every Day in every Week (*Sunday* excepted), and alſo receive and take the Stallage, Picage, and all other Profits, Advantages and Emoluments whatſoever, coming, ariſing or happening from ſuch Markets, and together with all Liberties and Free Cuſtoms belonging or appertaining to ſuch Markets, and in ſuch Manner as had been accuſtom'd before that Time within that Borough; and that they the ſaid Mayor, Aldermen and Burgeſſes ſhould from thence for ever after have, hold, enjoy, receive and take Toll of all Grain, which ſhould be carried, ſold or delivered, or ſhould be contracted for upon the ſaid Market-Days reſpectively, or any of them, as by the ſame Letters Pattent, amongſt other Things, it doth and may more fully appear; and by reaſon of the Premiſſes, the ſaid Body Corporate from the Time of Making the ſaid Letters Patent to this Time have been and now are ſeiſed of the ſaid Market, to be held every Day (*Sunday* excepted) within the ſaid Borough, as of a Fee and Right, in Right of the Borough aforeſaid; and that the ſaid Body Corporate always from the Making of the ſaid Letters Patent to this Time have repaired, cleanſed and maintained, and been uſed and accuſtomed to repair, cleanſe and maintain, as well the ſaid Place and Ground, where the ſaid Market hath been and now is held, and alſo the Streets, Ways and Paſſages within the ſaid Vill and within the Precincts thereof in the ſaid County of *Berkſhire*, leading at and to the ſaid Place and Ground, and during all that Time upon every Market-Day there, by ſome Perſon or Perſons from Time to Time deputed for that Purpoſe by the Mayor of the ſaid Borough for the Time being to receive the Toll aforeſaid, according to the Proportion aforeſaid, for all Grain brought to the ſaid Vill to be there ſold, and being there ſold by any Perſon not an

Inhabitant

Inhabitant within the ſaid Borough, or by the Laws and Cuſtoms of this Kingdom of *England* otherwiſe diſcharged; and that at the ſaid Time when, &c. (not being on *Sunday*) one *J. T.* not being an Inhabitant within the ſaid Borough, nor in any other Manner diſcharged from the Payment of the ſaid Toll, brought five Quarters of Barley to the ſame Vill to be there ſold in the ſaid Market, and ſold the ſame five Quarters of Barley * *there in the ſaid Market* to the ſaid *John Kerby*; whereupon they the ſaid *W.* and *J. C.* then being Perſons duly deputed by *Anthony Leaver*, then Mayor of the Borough aforeſaid, to collect and receive all the Toll coming, ariſing or happening within the Vill and Borough aforeſaid, for the Uſe and Benefit of the ſaid Body Corporate, at the ſaid Time when, &c. within the Vill of *Wallingford* aforeſaid, took and carried away one Pint of Barley from every four Buſhels of the Barley aforeſaid, amounting in the whole to ten Pints of the ſaid Barley for the Uſe of the ſaid Body Corporate, as it was lawful for them to do; and this they are ready to verify: Wherefore they pray Judgment, whether the ſaid *J. K.* ought therefore to have his ſaid Action againſt them, &c.

2 Lut. 1498, 1499, 1500.

A Juſtification for Carrying away a Piece of Leather, that Defendant diſtrained it for a Toll in a Fair erected by Letters Patent.

(4.) ——— And as to coming with Force and Arms, or whatever elſe is againſt the Peace of our ſaid Sovereign Lord the King, the ſaid *J.* ſaith, that he is not guilty thereof; and of this he puts himſelf upon the Country; and the ſaid *N.* doth likewiſe the ſame: And as to the Reſidue of the ſaid Treſpaſs above ſuppoſed to have been done, he the ſaid *J.* ſaith, that the ſaid *N.* ought not to have or maintain his Action for the ſame againſt him, becauſe he ſaith, that long before the Time when the Treſpaſs is above ſuppoſed to have been committed, the Lady *Eliza-*

* Note; *For Want of theſe Words the Plea was held ill.*

beth, late Queen of *England*, by her Letters Patent under her Great Seal of *England*, bearing Date at *Weſtminſter* the 1ſt Day of *Sept.* in the 38th Year of her Reign, which the ſaid *J.* brings here into Court, dated the ſame Day and Year, (amongſt other Things) granted for herſelf, her Heirs and Succeſſors to the Mayor and Burgeſſes of the Borough of *Totneſs* in the County aforeſaid, and their Succeſſors for ever, that they and their Succeſſors ſhould have and keep a Fair in the ſaid Borough for ever during three Days in every Year, to wit, on the Vigil of the Feaſt of St. *Simon* and *Jude*, on the Day of that Feaſt, and the Morrow of the ſame Feaſt, together with a Court of Pie-Powders to be held there during the Time of the Fair, by a Steward to be for that Purpoſe appointed by the Mayor for the Time being, together with all Liberties and Privileges cuſtomarily belonging to the ſame Court, together with the Tolls, Stallage, Picage, Fines and Amercements, and all other Profits, Commodities and Emoluments whatſoever, coming, happening or ariſing from ſuch Fair and the ſaid Pipe Powder Court, and with all Liberties and Privileges cuſtomarily appertaining and belonging to ſuch Fair and the ſaid Pipe Powder Court; provided nevertheleſs, that ſuch Fair be no Prejudice to other neighbouring Fairs: By Virtue of which Letters Patent, the ſaid Mayor and Burgeſſes were and yet are ſeiſed of the ſaid Fair, Court and the reſt of the Premiſſes as of Fee and Right, and being ſo ſeiſed, the ſame Mayor and Burgeſſes on the Vigil of and on the Day of the ſaid Feaſt, and the Morrow of the ſaid Feaſt of St. *Simon* and *Jude*, in the ſaid Year of our Lord 1660. had and held a Fair in the ſaid Borough; and the ſaid *J. H.* further ſaith, that the ſaid *N.* built and had a Standing within the ſaid Borough in the Fair aforeſaid, to wit, on the 30th Day of *October* in the Year aboveſaid, and then and there in the Time of the ſaid Fair had and ſold divers Pieces of Leather upon the ſaid Standing, by reaſon whereof, and by Virtue of the ſaid Letters Patent one Penny

became due and payable by the ſaid *N.* to the ſaid Mayor and Burgeſſes for the Toll thereof; wherefore the ſaid *J. H.* as a Servant of the ſaid Mayor and Burgeſſes, and by their Command, gave Notice thereof to the ſaid *N.* and then and there requeſted him to pay the ſaid Penny to the ſaid *J. H.* for the Uſe of the ſaid Mayor and Burgeſſes, but the ſaid *N.* then and there abſolutely refuſed to pay the ſaid Penny to him the ſaid *J.* for the Uſe of the ſaid Mayor and Burgeſſes; whereupon he the ſaid *J. H.* as a Servant of the ſaid Mayor and Burgeſſes, and by their Command, on the ſaid 1ſt Day of *November* in the Year aboveſaid, at *T.* aforeſaid, took and diſtrained the ſaid Piece of Leather in the ſaid Declaration mentioned for the ſaid Toll, and carried away the ſame, and ſtill detains it in his Cuſtody, as is lawful for him to do; which is the ſame Treſpaſs whereof the ſaid *N.* hath in his ſaid Declaration above complained againſt the ſaid *J. H.* Without this, that the ſaid *J. H.* is guilty of the Taking and Carrying away of the ſaid Piece of Leather at *A.* aforeſaid, or at any other Place in the Kingdom of *England* without the ſaid Borough of *Totneſs*; and this he is ready to verify, *&c.* With this further, that the ſaid *J. H.* doth aver, that the ſaid Fair is not to the Injury of any other neighbouring Fair, and that the ſaid Penny ſo demanded, as aforeſaid, for the ſaid Building and Uſe of the ſaid Standing, is a reaſonable Toll for the Toll of the ſaid Fair uſually coming and happening; and that to diſtrain for ſuch reaſonable Toll ſo unpaid, is a Cuſtom belonging and appertaining to the ſaid Fair, *&c.*

Traverſe.

Tho. Entr. 302.

A Juſtification by Deſcription, for erecting of Sheep Penns.

(5.) ——— And ſaith, that as to coming with Force and Arms, and whatever elſe is againſt the Peace of our Sovereign Lord the King that now is, he is not guilty thereof; of which he puts himſelf upon the Country; and the ſaid *W.* doth likewiſe the ſame: And as to the Reſidue of the ſaid Treſpaſs above ſuppoſed to have been done, the ſaid ſaith, that the ſaid *W.* ought not

not to have his Action therefore againſt him, becauſe he ſaith, that Time out of Mind there hath been kept and held a Market for Buying, Selling and Expoſing of Sheep to Sale in the Place in which the Hurdles and other Inſtruments are ſuppoſed to have been put and ſet up, on every *Monday* in every Week, yearly and every Year, during the whole Year, and that he the ſaid *R.* on the ſaid 1ſt Day of *May* in the ſaid 17th Year of the Reign of his ſaid Majeſty, and ever ſince hitherto was and yet is ſeiſed of and in one other Meſſuage, with the Appurtenances, in *R.* aforeſaid, in his Demeſne as of Fee, and that he the ſaid *R.* and all thoſe whoſe Eſtate he now hath, and at the Time of the Treſpaſs above ſuppoſed to have been done had, of and in the ſaid Meſſuage of him the ſaid *R.* with the Appurtenances, during all the Time aforeſaid, at all Times of the keeping and holding the ſaid Market, at their own Coſts and Charges made and kept Hurdles, and have put and ſet them up, and have been uſed and accuſtomed to put and ſet them up in the Place in which, *&c.* at the Time of keeping and holding the ſaid Market there, to make Penns for the Penning of the Sheep ſold and expoſed to Sale in the ſaid Market there; and in Conſideration thereof, the ſaid *R.* and all thoſe whoſe Eſtate he now hath and at the Time when, *&c.* had in the ſaid Meſſuage of him the ſaid *R.* with the Appurtenances, have during the whole Time aforeſaid had and taken, and been accuſtom'd to have and take of every Proprietor of ſuch Sheep ſo in the ſaid Market which ſhould be expoſed to Sale within the ſaid Penns there, a reaſonable Sum of Money for ſuch Sheep ſo expoſed to Sale within the ſaid Penns there; and the ſaid *R.* being ſo ſeiſed of the ſaid Meſſuage, he the ſaid *R.* at the Time when, *&c.* being on *Monday* at the Time when the ſaid Market was there held, put and ſet up twelve Hurdles in the ſaid Place, in which, *&c.* to make Penns there for Penning the Sheep expoſed to Sale in the ſaid Market, and with the ſaid Hurdles there made the ſaid Penns

and penned ſuch Sheep therein, and afterwards, to wit, after the Market was over, pulled down the ſaid Hurdles, and took and removed them from out of the ſaid Place, in which, &c. which ſaid Putting and Setting up of the ſaid Hurdles in the Place, in which, &c. is the ſame Treſpaſs of which the ſaid *W.* above complains; Without this, that he the ſaid *R.* is otherwiſe, or in any other Manner, guilty of the Premiſſes above charged upon him; and this he is ready to verify: Wherefore, &c.

Tho. Entr. 420.

A Juſtification for a Toll of Corn ſold in a Borough.

(6.) ——— And as to coming with Force and Arms, and all the ſaid Treſpaſs, except the Taking and Carrying away of the 20th Part of four Buſhels of Barley above ſuppoſed, they ſay, that they are in no wiſe Guilty thereof, as the ſaid *J.* hath above complained againſt them; and thereof they put themſelves upon the Country; and the ſaid *J.* doth likewiſe the ſame: And as to the Taking and Carrying away of the 20th Part of every Buſhel of the ſaid four Buſhels of Barley, they the ſaid *T.* and *G.* ſay, that the ſaid *J.* ought not to have his ſaid Action therefore againſt them, becauſe they ſay, that the Town of *R.* is, and Time out of Mind hath been, an antient Borough, and that before the Time when the Treſpaſs is above ſuppoſed to have been done, and alſo Time out of Mind, until the Time of our Lord *James* the Second late King of *England*, the Borough of *R.* aforeſaid was governed by a certain Officer called a Wakeman and twelve Aſſiſtants, and that the ſaid Officer and his Aſſiſtants for the Time being, by themſelves or Servants, have Time out of Mind taken and been uſed and accuſtom'd to take out of every Buſhel of Corn ſold, or brought to be ſold, by any Perſon or Perſons whatſoever in the ſaid Borough, the 20th Part of every Buſhel of Corn ſo as aforeſaid ſold or brought to be ſold in the ſaid Borough by ſuch Perſon to any Perſon or Perſons whatſoever, for the Uſe and Benefit of the ſaid Borough: And the ſaid *T.* and *G.* further ſay, that the ſaid late

King *James*, the Grandfather of his Majeſty that now is, before the Time when, &c. by his Letters Patent under his Great Seal of *England*, which they the ſaid *T.* and *G.* now bring here into Court, which are dated at *Weſtminſter* the 22d Day of *Jan.* in the 37th Year of his Reign, of his ſpecial Grace, and of his own Knowledge and mere Motion, for himſelf, his Heirs and Succeſſors willed, ordained, appointed, granted and declared, that the ſaid Borough of *R.* ſhould from thenceforth for ever be and remain a free Borough of itſelf, and that the Burgeſſes and Inhabitants of the ſame Borough and their Succeſſors ſhould from thenceforward be a Body Corporate and Politick really, truly and nominally, by the Name of the Mayor, Burgeſſes and Commonalty of the Borough of *R.* in the County of *E.* and the ſaid late King *James*, for himſelf, his Heirs and Succeſſors, by his ſaid Letters Patent, erected, made, ordained, conſtituted, created, confirmed and declared them to be a Body Corporate and Politick, really, truly and nominally, fully and to all Intents and Purpoſes, and that they ſhould have a perpetual Succeſſion by the ſame Name; and the ſaid King did by his ſame Letters Patent, of his further Special Grace and Favour, and of his own Knowledge and mere Motion, for himſelf, his Heirs and Succeſſors, grant and confirm to the ſaid Mayor, Burgeſſes and Community of the ſaid Borough, and their Succeſſors, all and all Manner the lawful Liberties, Privileges, Franchiſes, Immunities, Exemptions and Juriſdictions, and alſo all and ſingular the ſame, and ſuch Lands, Tenements, Hereditaments, Cuſtoms, Liberties, Privileges, Franchiſes, Immunities, Exemptions and Juriſdictions, which the Burgeſſes of the Borough of *R.* aforeſaid, or any or either of them, by whatſoever Name or Names, or by whatſoever Incorporation, or Cauſe of any Incorporation, they or any or either of them, had before that Time held, uſed or enjoy'd, or ought to have, hold, Uſe, or enjoy to them and their Succeſſors

for ever, of an Eſtate of Inheritance, by reaſon or means of any Charters or Letters Patent of any of his Anceſtors or Predeceſſors in any Manner before made, confirmed or granted, or by reaſon or means of any Preſcription, Uſage or Cuſtom, or any other legal Manner, Right or Title before uſed or accuſtomed, as by the ſaid Letters Patent, amongſt other Things, more fully appears; and the ſaid *T.* and *G.* further ſay, that the ſaid *J.* at the Time, when, *&c.* to wit, on the ſame 25th Day of *May* in the 16th Year aforeſaid, at *R.* aforeſaid in the County aforeſaid, brought to be ſold, and did ſell in the ſaid Borough of *R.* the ſaid four Buſhels of Barley in the ſaid Declaration above mentioned; whereupon the ſaid *T.* then and yet Mayor of the ſaid Borough of *R.* and the ſaid *G.* as a Servant of the ſaid Mayor, and by his Command, according to the Cuſtom aforeſaid, and by Virtue of the ſaid Letters Patent at the Time when, *&c.* took out the 20th Part of every Buſhel of the ſaid four Buſhels of Barley, by the ſaid *J.* as aforeſaid brought to be ſold, and ſold in the ſaid Borough, as aforeſaid, and carried away the 20th Part of the Barley ſo taken for the Uſe and Benefit of the ſaid Borough, as it was lawful for them to do; which Taking and Carrying away of the ſaid 20th Part of every Buſhel of the ſaid Barley, in the Manner and for the Cauſe aforeſaid, are the ſame Taking and Carrying away of the ſaid four Buſhels of Barley, whereof the ſaid *J.* above complains againſt the ſaid *T.* and *G.* and this they are ready to verify: Wherefore, *&c.*

Tho. Entr. 385.

Fee

Fee Simple and Fee Tail.

(1.) ——— THAT long before the ſaid Time, when the ſaid ſix Hogſheads of Allum are ſuppoſed to have been taken, his late Majeſty King *Charles* the Firſt, was ſeiſed of the Manor of *Mulgrave*, with the Appurtenances, in the ſaid County of *York* (of which Manor the Meſſuage aforeſaid, in which, &c. is and for ſo long a Time as there is no Remembrance of any Man to the Contrary, was Parcel), in his Demeſne as of Fee, in Right of his Crown of *England*; and being ſo ſeiſed thereof, &c.

A Seiſin in Fee of the King in Right of his Crown. 1 Saund. 187.

(2.) ——— That long before the ſaid Earl of *Nottingham* had any Eſtate in the ſaid Place, in which, &c. her late Majeſty Queen *Elizabeth* was ſeiſed in her Demeſne as of Fee, in Right of her Dutchy of *Lancaſter*, of and in the Manor of *Daventree* in the ſaid County of *Northampton*, with the Appurtenances, whereof the ſaid Place, in which, &c. was Parcel, and being ſo ſeiſed thereof, &c.

A Seiſin in Fee in the Crown, in Right of the Dutchy of Lancaſter. 2 Lut. 1233.

(3.) ——— That long before the ſaid Time, when the ſaid Treſpaſs is ſuppoſed to have been done, and alſo at the ſaid Time when, &c. one Sir *Francis Ruſſel*, Bart. was and now is ſeiſed of the Manor of *Selford*, with the Appurtenances, in the ſaid County of *Worceſter* in his Demeſne as of Fee, and that before the ſaid Time when, &c. one *Thomas Baldwin*, Gent. late Husband of the ſaid *Hellen*, was ſeiſed in his Demeſne as of Fee, of and in four Acres of Land, with the Appurtenances, in *Selford* aforeſaid, and held the ſame of the ſaid *Francis*, as of his ſaid Manor of *Selford* by Fealty, and by doing Suit and Service at the Court of the ſaid *Francis*, of his Manor aforeſaid, to be held from three Weeks to three Weeks at that Manor, of which Services the ſaid

A Seiſin in Fee of Lands by Fealty and Suit of Court. 2 Lut. 1310.

Francis was ſeiſed, by the Hands of the ſaid *Thomas Baldwin*, as by the Hands of his very [or *true*] Tenant, (to wit) as of Fee and Right, *&c.*

A Seiſin in Fee of a Reverſion by 3, under a Bargain and Sale, and by the Statute of Uſes — The Death of 2, whereby the third ſurviving was ſole ſeiſed by Survivorſhip, and his Death, whereby the Lands came by Deſcent to his Son.

(4.) ——— Bargained and ſold to the ſaid *William Bolton*, Grandfather of the ſaid *John Norton* and *Richard Laſcells*, the Reverſion of the ſaid Tenements, with the Appurtenances, whereof, *&c.* after the ſaid Term of ninety-nine Years, *laſt above-mentioned* (amongſt other Things) To have and to hold to the ſaid *William Bolton*, the Grandfather, *John Norton*, and *Richard Laſcels*, their Heirs and Aſſigns for ever; by Virtue of which Bargain and Sale, and of the Inrolment aforeſaid, and by Force of the Statute for transferring Uſes into Poſſeſſion made and publiſhed in the Parliament of his late Majeſty King *Henry* the VIIIth, held at *Weſtminſter* on the 4th Day of *February* in the 27th Year of his Reign, they the ſaid *William Bolton*, the Grandfather, *John Norton* and *Richard Laſcells* were ſeiſed of the ſaid Reverſion of the Tenements aforeſaid, with the Appurtenances, whereof, *&c.* in their Demeſne as of Fee; and they being ſo ſeiſed thereof; and the ſaid *William Williams*, *Robert Mitchell*, *Walter Marks* and *Robert Marſh* being poſſeſſed of the ſaid Manor, with the Appurtenances whereof, in the Manner aforeſaid, they the ſaid *William Williams*, *Robert Mitchell*, *Walter Marks* and *Robert Marſh*, afterwards, and before the ſaid Time when, *&c.* (to wit) on the 31ſt Day of *December* in the 7th Year of the Reign of his late Majeſty King *Charles* the Firſt, at *Warwick* aforeſaid, granted all their Right, Title, Intereſt and Term of Years, which they then had to come in the ſaid Manor, with the Appurtenances, whereof, *&c.* to the ſaid *William Bolton*, the Grandfather, by Virtue of which Grant, he the ſaid *William*, the Grandfather, enter'd into the ſaid Manor, with the Appurtenances, whereof, *&c.* and was poſſeſſed thereof for the Term demiſed and granted, as aforeſaid; and he being ſo poſſeſſed thereof,

Q. If the Term was not extinguiſhed.

thereof, and the ſaid *William*, the Grandfather, and the ſaid *John Norton* and *Richard Laſcells*, being ſeiſed of the ſaid Reverſion of the Tenements aforeſaid, in the Manner aforeſaid, they the ſaid *John Norton* and *Richard Laſcells* afterwards, and before the ſaid Time, when, &c. (to wit) on the 1ſt Day of *June* in the 20th Year of the Reign of his ſaid late Majeſty King *Charles* the Firſt, died at *Warwick* aforeſaid, ſeiſed of ſuch their Eſtate therein; and the ſaid *William Bolton* the Grandfather ſurvived them, and thereby became ſole ſeiſed of the Reverſion of the ſaid Tenements, with the Appurtenances, whereof, &c. after the ſaid Term of ninety-nine Years *firſt above mentioned*, in his Demeſne as of Fee; and being ſo ſeiſed thereof, he the ſaid *William Bolton*, the Grandfather, afterwards and before the ſaid Time when, &c. (to wit) on the 10th Day of *May* in the 12th Year of the Reign of his preſent Majeſty likewiſe died at *Warwick* aforeſaid ſeiſed of ſuch his Eſtate therein; after whoſe Deceaſe the ſame Reverſion of the Tenements aforeſaid, with the Appurtenances, deſcended to one *Stephen Bolton*, Eſq; as Son and Heir of the ſaid *William Bolton*, whereby the ſaid *Stephen* was ſeiſed of the ſame Reverſion of the Tenements aforeſaid, with the Appurtenances, in his Demeſne as of Fee, and the ſaid *Stephen* being ſo ſeiſed thereof afterwards and before the ſaid Time when, &c.

2 Lut. 1168, 1169.

(5.) ——— And whereas the ſaid *D.* [*ſuch a Day and Year*] was and now is ſeiſed of and in the Rectory of *D.* in the County of *N.* (to which Rectory the Advowſon of the Church of *D.* aforeſaid in the County aforeſaid, is appendant) in his Demeſne as of Fee, and being ſo ſeiſed, &c.

A Seiſin in Fee of a Rectory to which an Advowſon is Appendant. Theſ. Brev. 181.

(6.) ——— That

The Manner of Pleading a Seiſin in Fee to Uſes before the *Statute of Uſes*, and a Deviſe of the Uſes in Tail, and then a Seiſin of Ceſtui que Uſe, after the *Statute of Uſes*, and a Deſcent to the Iſſue in Tail, and the Death of that Iſſue, and a Deſcent to Coheirs and their Seiſin in Tail, the Death of one, and a Deſcent to the other of her Moiety, a Seiſin of the Huſband of the ſurviving Coheir as Tenant by the Curteſy, a Seiſin of the Reverſion by the Iſſue in Tail, and the Seiſin of the Tenant by the Curteſy.

(6.) ——— That before the ſaid *Crafford Gibbons* had any Thing in the Reverſion of the Tenements aforeſaid, with the Appurtenances, one *J. R.* Eſq; *H. T.* Gent. *W. R.* Gent. *N. L.* Merchant, and *H. T.* were ſeiſed of the ſaid Tenements, with the Appurtenances, in their Demeſne as of Fee, to the Uſe and Behoof of one Dame *Joan Bradbury*, Widow, and her Heirs, and they being ſo ſeiſed thereof to ſuch uſe and Behoof, as aforeſaid, ſhe the ſaid Dame *Joan Bradbury* afterwards, to wit, on the ſecond Day of *March* in the 21ſt Year of the Reign of his ſaid Majeſty King *Henry* the 8th at *S.* aforeſaid, made her Laſt Will and Teſtament in Writing, and thereby willed and deviſed, that *Guy Crafford* and *Joan* then his Wife ſhould have the Tenements aforeſaid, with the Appurtenances, above ſpecified in the ſaid Declaration (amongſt other Things) to them and the Heirs of their Bodies, lawfully begotten, and afterwards, that is to ſay, the ſame Day and Year, ſhe the ſaid *Joan Bradbury* died at *S.* aforeſaid, after whoſe Deceaſe the ſaid *J. R. H. T. W. R. N. L.* and *H. T.* by Virtue of the ſaid Laſt Will and Teſtament of the ſaid *Joan Bradbury*, were ſeiſed of the ſaid Tenements, with the Appurtenances, above ſpecified in the ſaid Declaration in their Demeſne as of Fee, to the Uſe and Behoof of the ſaid *G. C.* and *Joan* his Wife, and the Heirs of their Bodies lawfully begotten, and being ſo ſeiſed to ſuch Uſe and Behoof, remained and continued ſo till the 4th Day of *February* in the 27th Year of the Reign of his ſaid late Majeſty King *Henry* the 8th, on which Day, by Virtue of the Act of Parliament made and publiſhed the ſame 4th Day of *February* in the Parliament of his ſaid Majeſty held at *Weſtminſter* in the County of *Middleſex*, in

2 Saund. 256, 257, 258.

in the ſaid 27th Year of his Reign, for Transferring Uſes into Poſſeſſion, they the ſaid *Guy Crafford* and *Joan*, his Wife, became ſeiſed of the Tenements aforeſaid, with the Appurtenances, in their Demeſne as of Fee Tail, to wit, to them and the Heirs of their Bodies lawfully begotten; and being ſo ſeiſed thereof, they the ſaid *Guy Crafford* and *Joan* his Wife afterwards, to wit, on the 1ſt Day of *November* in the 18th Year of the Reign of her late Majeſty Queen *Elizabeth* died at *S.* aforeſaid, ſeiſed of ſuch their Eſtate therein, after whoſe Deceaſe the ſaid Tenements, with the Appurtenances, above ſpecified in the Declaration, deſcended to one *Arthur Crafford*, as Son and Heir of the Bodies of the ſaid *Guy* and *Joan* his Wife lawfully begotten, whereby the ſaid *Arthur* enter'd into the ſaid Tenements, with the Appurtenances, and was ſeiſed thereof in his Demeſne as of Fee Tail, (to wit) to him and the Heirs of the Bodies of the ſaid *Guy* and *Joan* his Wife lawfully begotten, and being ſo ſeiſed thereof, he the ſaid *Arthur* afterwards, to wit, on the firſt Day of *May* in the forty-ſecond Year of the Reign of her ſaid late Majeſty Queen *Elizabeth* died at *S.* aforeſaid, being ſeiſed of ſuch his Eſtate therein, after whoſe Deceaſe the ſaid Tenements, with the Appurtenances, above ſpecified in the ſaid Declaration, deſcended to *Mary* and *Wineſrid Crafford*, as Daughters and Coheirs of the ſaid *Arthur Crafford* lawfully begotten of his Body; whereby the ſaid *Mary* and *Wineſrid*, enter'd into the ſaid Tenements, with the Appurtenances, and were ſeiſed thereof in their Demeſne as of a Fee Tail, (to wit) to them and the Heirs of the Bodies of the ſaid *Guy Crafford* and *Joan* his Wife lawfully begotten ———

And then the Precedent goes on as in fol. 166, Tit. Iſſue, Pl. 2. ——— *which ſhews the* Death *of* one *of the* Coheirs, *and a* Deſcent *to the other*, her Marriage *with* George Gibbens, *and having Iſſue of that Marriage* Crafford Gibbens, *and afterwards dying*, George Gibbens *the Husband*, *became*

became Tenant by the Curteſy, *and was ſeiſed: Then the Precedent goes on thus with the* Reverſion:

—— And the Reverſion of the ſaid Tenements, with the Appurtenances, deſcended to the ſaid *Crafford Gibbens*, as Son and Heir of the ſaid *Winefrid*, lawfully begotten of her Body; whereby the ſaid *Crafford* was ſeiſed of the Reverſion of the ſaid Tenements, with the Appurtenances, as of a Fee Tail and Right, (to wit) to him and the Heirs of the Body of the ſaid *Guy Crafford* and *Joan* his Wife lawfully begotten; and the ſaid *Crafford Gibbens* being ſo ſeiſed of the ſaid Tenements, with the Appurtenances, in his Demeſne as of a Freehold for the Term of his Life; and the ſaid *Crafford* being ſo ſeiſed of the Reverſion thereof as of a Fee Tail and Right, as aforeſaid ———

Then the Precedent goes on and ſhews a Grant of the Reverſion *by the* Tenant in Tail, *to one for Years after the Deceaſe of the Tenant by the Curteſy, and a* Bargain and Sale *of the* Reverſion, *and an Aſſignment of the Term* to the Bargainee, *&c.*

Feoffment.

A Feoffment in Fee to two, to the Uſe of them and their Heirs, and their Seiſin thereon.

(1.) BEcauſe they ſay, that before the Day of the Recognizance of the Debt aforeſaid, by the ſaid *Robert Yarway* named in the Writ of *Scire Facias* aforeſaid, one *Thomas Smith* was ſeiſed of the Meſſuage aforeſaid, with the Appurtenances, in his Demeſne as of Fee, and being ſo ſeiſed thereof afterwards, (to wit) on the 20th Day of *June* in the Year of our Lord 1666. enfeoffed the ſaid *Robert Yarway* abovenamed in the Writ aforeſaid, and one *Thomas Yarway*, of the

the Meſſuage aforeſaid, with the Appurtenances, To have and to hold, to the ſaid *Robert Yarway* and *Thomas Yarway*, their Heirs and Aſſigns, to the Uſe of the ſaid *Robert* and *Thomas* and their Heirs and Aſſigns for evermore; By Virtue of which Feoffment the ſaid *Robert Yarway* and *Thomas Yarway* were ſeiſed of the Meſſuage aforeſaid, with the Appurtenances, in their Demeſne as of Fee; and being ſo ſeiſed thereof, &c. 2 Saund. 9, 10.

(2.) ——— And being ſo ſeiſed thereof, they the ſaid *T.* and *L.* enfeoffed the ſaid *T. A.* the Father, and the ſaid *A.* of the Tenements, with the Appurtenances, (amongſt other Things) to have and to hold the ſame to the ſaid *T.* and *A.* and the Heirs of the ſaid *T.* for ever; and that by Virtue of the ſaid Feoffment, they the ſaid *T. A.* the Father, and the ſaid *A.* were ſeiſed of the ſaid Tenements, with the Appurtenances, newly aſſigned, to wit, the ſaid *T. A.* in his Demeſne as of Fee, and the ſaid *A.* in her Demeſne as of Freehold, for the Term of her natural Life; and they the ſaid *T.* and *A.* being ſeiſed of the ſaid Tenements, with the Appurtenances, newly aſſigned in the Manner aforeſaid, the ſaid *T. A.* the Father, died ſeiſed of ſuch Eſtate therein; and the ſaid *A.* ſurvived him, and inhabited within the ſame Tenements, with the Appurtenances, and was ſole ſeiſed in her Demeſne as of Freehold by Right of Survivorſhip, &c. and that the Reverſion of the ſaid Tenements, with the Appurtenances, after the Death of the ſaid *A.* deſcended to the ſaid *T. A.* the Son, as Son and Heir of the ſaid *T. A.* the Father by which the ſaid *T. A.* the Son was ſeiſed of the Reverſion of the ſaid Tenements, with the Appurtenances, as of a Fee and Right; and the ſaid *T. A.* the Son, being ſo ſeiſed thereof, and the ſaid *A.* being ſeiſed of the ſaid Tenements newly aſſigned, with the Appurtenances, as of her Freehold, the ſaid *A.* at *B.* aforeſaid, was married to the ſaid *S. F.* by reaſon whereof they the ſaid *S.* and *A.* were ſeiſed of the ſaid Tenements,

A Grant and Confirmation by Feoffment pleaded. Rob. Entr. 469.

nements, with the Appurtenances, in their Demeſne as of Freehold, in Right of the ſaid *A.* for the Term of her Life, as the ſaid *S. S. W.* and *S.* have above alledged: But they the ſaid *S.* and *A.* further ſay, that they being ſeiſed of the ſaid Tenements, with the Appurtenances, in the Manner aforeſaid, and the ſaid *T. A.* the Son, being ſeiſed of the ſaid Reverſion, in the Manner aforeſaid, the ſaid *T. A.* the Son, before the Time of committing the ſaid Treſpaſs, and before the ſaid 16th Day of *July* in the 19th Year aboveſaid, by his Indenture, which they the ſaid *S.* and *A.* have here brought into Court, ſealed with the Seal of the ſaid *T. A.* the Son, which is dated the 20th Day of *March* in the ſaid 19th Year of the Reign of her ſaid Majeſty at *B.* aforeſaid granted and confirmed the ſaid Reverſion to the ſaid *S.* (then being in Poſſeſſion of the ſaid Tenements, with the Appurtenances, newly aſſigned), To have and to hold to the ſaid *S.* and his Heirs for ever, by reaſon of which Grant and Confirmation, the ſaid *S.* became and now is ſeiſed of the ſaid Reverſion as of a Fee and Right; and this they are ready to verify: Wherefore and foraſmuch as the ſaid *S. S. W.* and *S.* have acknowledged the ſaid Treſpaſs in the ſaid Tenements, with the Appurtenances, newly aſſigned, they the ſaid *S.* and *A.* pray Judgment and their Damages occaſioned by the ſaid Treſpaſs to be adjudged to them, *&c.*

Ex. S. A. A.

The End of the Firſt Volume.

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